

PR#9833

THOMPSON, STEVE

4/7/2009

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,
Plaintiff,

vs. CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,
Defendants.

VIDEOTAPED DEPOSITION OF STEVE THOMPSON
TAKEN ON BEHALF OF THE DEFENDANTS
ON APRIL 7, 2009, BEGINNING AT 9:30 A.M.
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:

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On behalf of the DEFENDANT-PETERSON FARMS, INC.:

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REPORTED BY: Laura L. Robinson, CSR, RPR

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(APPEARANCES CONTINUED)

On behalf of the DEFENDANT-GEORGE'S, INC. AND GEORGE'S
FARMS, INC.:

Jennifer Lloyd

THE BASSETT LAW FIRM

221 North College Avenue

Fayetteville, Arkansas 72702

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ALSO PRESENT: Stephen Carns, Videographer

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STIPULATIONS

It is stipulated that the deposition of STEVE THOMPSON may be taken on the APRIL 7, 2009, pursuant to agreement and in accordance with the Oklahoma Discovery Code before Laura L. Robertson, CSR, RPR.

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1 THE VIDEOGRAPHER: This is the videotape
2 deposition of Steve Thompson in the matter of the
3 State of Oklahoma versus Tyson Foods, Case Number
4 is 05-CV-0329 GKF-PJC, being held at 707 North
5 Robinson, Oklahoma City, Oklahoma, on the 7th of
6 April, 2009, on record at 9:39 a.m. Counsel please
7 state your appearance for the record.

8 MR. HAMMONS: Trevor Hammons for the State
9 of Oklahoma.

10 MS. PENISTEN: Martha Penisten for DEQ.

11 MS. LLOYD: Jennifer Lloyd for George's,
12 Inc.

13 MR. MCDANIEL: Scott McDaniel for Peterson
14 Farms, Inc.

15 WHEREUPON,

16 STEVE THOMPSON,
17 after having been first duly sworn, deposes and says
18 in reply to the questions propounded as follows,
19 to-wit:

20 DIRECT EXAMINATION

21 BY MR. MCDANIEL:

22 Q. Good morning, sir.

23 A. Good morning.

24 Q. Would you state your full name for the
25 record, please.

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1 A. Stephen Arthur Thompson.

2 Q. And who is your employer?

3 A. The state of Oklahoma.

4 Q. And what is your employment address?

5 A. 707 North Robinson.

6 Q. Do you live here in Oklahoma City?

7 A. I do not.

8 Q. Where do you live?

9 A. I live in El Reno.

10 Q. And what is your position for the state of
11 Oklahoma?

12 A. I'm the executive director of the Department
13 of Environmental Quality.

14 Q. And how long have you had that position?

15 A. For almost seven years.

16 Q. Okay. When did you first go to work for the
17 state of Oklahoma?

18 A. In February of 1985.

19 Q. What was your position at that time?

20 A. I was an auditor for the Oklahoma Department
21 of Agriculture.

22 Q. What does an auditor for the Department of
23 Agriculture do?

24 A. The Department of Agriculture collects fees
25 on commodities on products, fertilizer, feed and seed.

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1 My job was to audit the records of companies that sold
2 those products into the state of Oklahoma to determine
3 if they were paying the appropriate fee.

4 Q. All right. If you would, take a minute and
5 sort of walk me through the positions you have held --
6 have you been -- have you been continuously employed
7 by the state of Oklahoma since February of '85?

8 A. I have.

9 Q. All right. If you would walk me through the
10 positions that you have had and the best of your
11 recollection tell me when the transitions took place.

12 A. Okay. As I said, I went to work for the
13 Department of Agriculture in February of '85. About a
14 year later I was promoted to a program manager. About
15 a year after that, I was promoted to a section
16 supervisor for inspector services.

17 Q. Is this still in the Department of Ag?

18 A. It is.

19 Q. If you change agency, be sure and let me
20 know that.

21 A. I will. About a year after that, they
22 decided, the Department of Agriculture decided to
23 combine the sections for inspector services and for
24 natural resources into one section, and I became the
25 section supervisor for that program.

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1 I continued in that position until 1990. In
2 1990 I applied for the position of director of the
3 Oklahoma Department of Pollution Control. I was
4 chosen for that position.

5 I worked for the Oklahoma Department of
6 Pollution Control as the director until August of
7 1993, when I became the deputy executive director of
8 the Department of Environmental Quality. I served in
9 that position until July of 2002, when I was chosen to
10 be the executive director of the Department of
11 Environmental Quality, and I have served in that
12 position since then.

13 Q. Was there a time period when you worked for
14 the office of the Secretary of Environment?

15 A. I'm sorry, there was a time period. When
16 the Department of Environmental Quality was
17 established by statute, the Department of Pollution
18 Control was disestablished.

19 And so between July of 2000 -- I'm sorry,
20 July of 1992 and August of 2003, I served as the
21 assistant Secretary of Environment under secretary
22 Patty Eaton.

23 Q. All right. You just said August of 2003.
24 Did you mean 1993?

25 A. I'm sorry, 1993.

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1 Q. Okay. Just want to get --

2 A. Must be my age.

3 Q. That's all right. I just want to get a good
4 record.

5 A. Sorry. So from July of 2000 -- there I go
6 again. 1992 until August of 1993, I served as the
7 assistant secretary of the environment during that
8 transition period.

9 Q. All right. Do you have a college education?

10 A. I do.

11 Q. What degrees do you have and what were your
12 majors?

13 A. I have a bachelor's degree in business
14 administration.

15 Q. Have you had any, you obviously work and are
16 responsible in areas involving the environment and
17 some of the sciences. Do you have any formal
18 education in any of the sciences?

19 A. I do not.

20 Q. In the course of either prior to coming to
21 work for the state or the time you were with the
22 state, did you receive any particular training in
23 environmental sciences?

24 A. Well, not particular training in
25 environmental sciences. I have done a lot of work in

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1 environmental program management, which I view my job
2 to be, but not particularly in environmental sciences.

3 Q. Would you characterize yourself as your
4 greater expertise being in the field of management
5 administration, as compared to technical evaluations?

6 A. Yes, I would.

7 Q. Okay. Have you given a deposition before,
8 sir?

9 A. No.

10 Q. All right. Let me take just a moment and
11 give you a few guidelines.

12 A. Okay.

13 Q. First off, at any time you need a break, we
14 will take a break.

15 A. Okay.

16 Q. I'm not sure how long the tapes are, but we
17 often stop about every hour or so. But if you need to
18 take a break before that, let me know.

19 A. Okay.

20 Q. My only concern about taking a break will be
21 if I have asked you a question and it hasn't been
22 answered, I would like the answer before you leave.
23 So I want you to be comfortable.

24 A. Sure.

25 Q. If I ask a question that's in any way

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1 confusing to you because I use terms that are
2 confusing or I just haven't made a sensible sentence
3 to you, let me know so I can clarify it, because I
4 want to make sure I ask you questions you understand
5 that way I know that I can trust your answers are
6 based on understanding my questions.

7 A. Okay.

8 Q. Now, this position that you currently hold
9 at the Department of Environmental Quality, what are
10 your duties?

11 A. I have general oversight of the agency,
12 particularly related to policy, budget and operations.

13 Q. And do you have an assistant director?

14 A. I have an acting assistant director.

15 Q. Who is that?

16 A. His name is Jimmy Givens. The assistant
17 director, deputy executive director, was Craig Kenmer,
18 but Mr. Kenmer was on leave from the position for
19 about the last two and a half years until his -- and
20 then he recently died.

21 So over the past three or four months,
22 Mr. Givens has been acting in that position.

23 Q. All right. I'm not going to make this an
24 exhibit, but I'm just handing you the amended notice
25 of this deposition. Have you seen that document

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1 before?

2 A. Yes.

3 Q. Okay. When we go through today, and I refer
4 to the lawsuit or this lawsuit, do you understand I'm
5 referring to the lawsuit that's described on this
6 document, that's the State of Oklahoma versus Tyson
7 Foods and a number of other poultry companies?

8 A. I do.

9 Q. Okay. So that's the whole reason we are
10 here. That's no big surprise to you.

11 A. Okay.

12 Q. Now, this lawsuit, do you know when it was
13 filed?

14 A. I don't know the specific date. My
15 recollection is that it was sometime in 2004, 2005.

16 Q. Now, did anyone consult with you before this
17 lawsuit was filed about the filing of this lawsuit?

18 A. No.

19 Q. Did you give your blessing to the filing of
20 this lawsuit?

21 A. In the time frame that the lawsuit was
22 filed, we met with the governor, and we agreed that
23 this was the state of Oklahoma's lawsuit. And being
24 an agency of state government, we are a party to that.
25 We did not request the lawsuit, but we understood that

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1 we were a party to it.

2 Q. This meeting that you had --

3 A. And agreed to be a party to.

4 Q. This meeting, did it occur after the lawsuit
5 was filed?

6 A. My recollection is that that is the case,
7 yes.

8 Q. Who else was in that meeting?

9 A. The Secretary of Agriculture, Terry Peach
10 was there, the Director of the Oklahoma Conservation
11 Commission, Mike Thralls was there, the Director of
12 the Oklahoma Water Resources Board, DeWayne Smith was
13 there.

14 Director of the Oklahoma Scenic Rivers
15 Commission, Ed Fite was there. The Attorney General
16 was there, the governor and his staff, who I don't
17 recall who they were were in the meeting.

18 That's the -- those are the people that I
19 can recall right now that were in the meeting. There
20 may have been others, I just don't recall who they
21 were right now.

22 Q. Do you recall who convened the meeting?

23 A. The governor convened the meeting.

24 Q. And tell me about what transpired, to the
25 best of your recollection.

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1 **A.** Simply the governor advised the agencies
2 that he was in full concurrence with the suit, and
3 that as agencies of state government, we would be
4 expected to be a part of that suit. And I think
5 that's the gist of what he said. That's my
6 recollection of it.

7 **Q.** Were you given any type of technical
8 briefing at this meeting about the underpinnings of
9 the lawsuit?

10 **A.** Not that I recall.

11 **Q.** Since you have been employed with the state
12 of Oklahoma, have you ever been involved in a natural
13 resource damage assessment?

14 **A.** Yes. The agency is involved in natural
15 resource damage assessments.

16 **Q.** About how many have you been involved in, or
17 aware of?

18 **A.** The largest one is related to the Tar Creek
19 Superfund site. That's the one that I have personally
20 been involved in. There may be others that have
21 occurred, but that's the major one that I have been
22 involved in.

23 **Q.** And the Tar Creek natural resource damage
24 assessment is ongoing?

25 **A.** It is.

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1 Q. Prior to Tar Creek, were there others that
2 you recall that the state has been involved in?

3 A. I'm sure there are others that we have been
4 involved in. Just none come to mind right now.

5 Q. All right. Tell me if you can, and I'm
6 speaking generally, can you explain the process that
7 the agency goes through in conducting a natural
8 resource damage assessment?

9 A. Well, the natural resources trustee is the
10 Secretary of Environment, and our Land Protection
11 Division, at least in the case of Tar Creek, did an
12 assessment of the potential damages to natural
13 resources, along with other agencies that are involved
14 in that, and makes a report of that assessment to the
15 natural resources trustee.

16 Q. Are there federal statutes that guide the
17 process?

18 A. I believe there are, yes.

19 Q. Are you familiar with them?

20 A. Not -- I'm not an expert on those.

21 Q. Are there state statutes that guide the
22 process?

23 A. I'm not familiar with them, but I would
24 assume that if we are doing it under state law that
25 there are.

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1 Q. Can you direct me to those statutes?

2 A. No, I can't.

3 Q. Has the Oklahoma Department of Environmental
4 Quality conducted any natural resource damage
5 assessment or assessments in the Illinois River
6 Watershed?

7 A. Not that I'm aware of.

8 Q. The Illinois River Watershed is obviously a
9 term I will be using a number of times today. I want
10 to make sure that you and I are on the same page what
11 that means. Are you generally familiar with the
12 geographic area known as the Illinois River Watershed?

13 A. I am.

14 Q. Okay, good. Mr. Thompson, I have handed you
15 what I have marked as Exhibit 1 to your deposition.
16 Can you tell me what this is?

17 (Defendant's Exhibit 1 marked for
18 identification)

19 A. It is a provision of the environmental
20 quality code that generally says that it is unlawful
21 for persons to cause pollution to waters of the state,
22 and that if I determine that to be the case, that I
23 can order people to comply in a way that that ceases.

24 Q. All right. Just for the record purposes,
25 what I have, Exhibit 1 is the text of title 27-A,

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1 section 2-6-105 of the Oklahoma Statutes. Do you
2 agree?

3 A. Yes.

4 Q. What are Oklahoma Department of
5 Environmental Qualities responsibilities under this
6 statute?

7 A. Well, we have specific statutes that direct
8 us in our activities, as do other agencies. So we
9 consider this a fall back position for the state, that
10 if action is not being taken by other agencies with
11 more direct statutory responsibility, that we do have
12 some authority to be the fall back for those kinds of
13 activities.

14 Q. So you're saying the way this is structured,
15 Oklahoma Department of Environmental Quality is, in
16 essence, sort of a back stop to the jurisdiction of
17 the other Oklahoma agencies that have environmental
18 responsibilities?

19 A. It can be interpreted that way.

20 Q. Has it been used that way, to your
21 knowledge?

22 A. Not to my knowledge.

23 Q. And from time to time today, I'm going to
24 ask you to read things into the record.

25 A. Okay.

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1 Q. And if I could ask you to read this
2 paragraph B aloud, please.

3 A. "If the executive director finds that any of
4 the air, land or waters of the state have been or are
5 being polluted, the executive director shall make an
6 order requiring such pollution to cease within a
7 reasonable time, or require such manner of treatments
8 or disposition of the sewage or other polluting
9 material that may be in his judgment be necessary to
10 prevent further pollution. Shall be the duty of the
11 person to whom such order is directed to fully comply
12 with the order of the executive director."

13 Q. All right. When it says in subsection B,
14 "The executive director finds," what is the process
15 that you or your staff go through in order to reach a
16 finding?

17 MR. HAMMONS: I will object to the form, to
18 the extent it calls for a legal conclusion.

19 Q. (BY MR. MCDANIEL) You can go ahead and
20 answer, sir.

21 A. The process would be that an issue would
22 come to our attention, the program would evaluate the
23 problem. Our legal staff would then look at the
24 statutory authorities, and then they would bring the
25 issue to me for a decision.

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1 Q. That decision, is that equivalent to a
2 finding?

3 A. It would be a -- yes, it would be a finding,
4 and if we found that there was an activity under the
5 statute that was not being addressed, we could issue
6 an order.

7 Q. All right. Are all findings that you issue
8 under this statute, are they in writing?

9 A. Oh, yes.

10 Q. Okay. If the Oklahoma Department of
11 Environmental Quality becomes aware of unlawful
12 pollution of the waters of the state, does it have the
13 duty to undertake this process?

14 A. It has a duty absent action by another
15 agency, with more specific statutory authority.

16 Q. All right. I'm going to ask you, sir, to
17 take a moment and look at this deposition notice that
18 I gave you, and familiarize yourself with the names of
19 the defendants. I'm assuming you don't have them
20 committed to memory.

21 A. I do not.

22 Q. There is one name on here, it is Aviagen,
23 Inc. that was originally in the case style, and they
24 are no longer a defendant in the case, so I'm putting
25 a line through that. Would you take a moment and look

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1 at the names of all of the remaining defendants?

2 A. Okay.

3 Q. All right, sir. Have you as executive
4 director of Oklahoma Department of Environmental
5 Quality made a finding that any one of the companies
6 listed as defendants on that notice has caused
7 pollution of the waters of the state in the Illinois
8 River Watershed?

9 MR. HAMMONS: And I would object to the
10 form.

11 THE WITNESS: The answer to your question is
12 that if -- I don't have the records at hand, but if
13 during -- these companies are also in the business of
14 food processing, and that is under our direct
15 jurisdiction.

16 And so it may be that under our
17 jurisdictions for food processing, we may have found,
18 had a finding and may have issued an order. But I
19 don't specifically -- I don't specifically recall
20 that. But I'm not at a point where I can say
21 conclusively one way or the other whether that's the
22 case or not.

23 Q. All right. And if that were the case, are
24 you referring to, sir, potentially to a situation that
25 would involve a point source discharge associated with

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1 a food processing facility?

2 A. It could be. It could be related to a point
3 source water discharge, it could be related to air
4 quality issues, it could be related to the improper
5 disposal of process waste. It could be any number of
6 those things.

7 Again, I don't have a independent
8 recollection of having done so, but it could have
9 happened.

10 Q. All right. You know this case, this lawsuit
11 involves allegations relating to the manner in which
12 poultry litter or some may say poultry waste has been
13 handled or utilized within the Illinois River
14 Watershed. Do you understand that to be the case?

15 A. I do.

16 Q. All right. That's the context for my
17 question.

18 A. Okay.

19 Q. So let me re-ask the question, if you don't
20 mind.

21 A. Okay.

22 Q. Have you as executive director of Oklahoma
23 Department of Environmental Quality made a finding
24 that any one of these companies listed as the
25 defendant in this case has caused pollution of the

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1 waters of the state of Oklahoma in the Illinois River
2 Watershed by virtue of management or utilization of
3 poultry litter or poultry waste?

4 A. I have not.

5 MR. HAMMONS: Object to the form.

6 THE WITNESS: Sorry.

7 MR. HAMMONS: I'm sorry, I object to the
8 form. You can answer.

9 Q. (BY MR. MCDANIEL) I'm sorry, sir, would you
10 just repeat your answer so the video --

11 A. I have not.

12 Q. Now, the same context, sir, have you as
13 executive director made a finding that any poultry
14 grower operating under a contract with any one of the
15 companies that's listed as a defendant in this case
16 has caused pollution to the waters of the state of
17 Oklahoma in the Illinois River Watershed?

18 MR. HAMMONS: Object to the form.

19 THE WITNESS: Again, in the context of --
20 let me be clear. If a poultry grower has a violation
21 under our direct statutory responsibility, we could
22 have. For instance, if they had a septic tank that
23 was malfunctioning.

24 But in the context of the lawsuit, the
25 answer to your question is no, I have not.

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1 Q. (BY MR. MCDANIEL) All right. Are you
2 generally familiar with the Federal Solid Waste
3 Disposal Act?

4 A. Generally.

5 Q. And we often, or I shouldn't say we. It is
6 often referred to as RCRA?

7 A. Yes.

8 Q. R-C-R-A. And these, what I'm referring to,
9 these are federal environmental laws that address the
10 handling and disposal of solid and hazardous wastes.
11 Do you agree?

12 A. That's correct.

13 Q. What duties does the Oklahoma Department of
14 Environmental Quality have under these federal laws?

15 A. Well, we have a responsibility for the
16 proper disposal of solid waste, particularly as it
17 relates to disposal in landfills. We have a
18 responsibility, direct responsibility for disposal of
19 waste at a site that would be considered
20 an unpermitted landfill.

21 And then we have a general responsibility --
22 we have responsibility for subtitle C, which is the --
23 which is particularly related to the generation and
24 disposal of hazardous wastes.

25 Q. Does the state of Oklahoma have its own

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1 state statutory counterpart to the -- to RCRA?

2 A. It does.

3 Q. What is that statute, can you direct me to
4 that?

5 A. It is in 27-A. It is the solid waste
6 statutes. I don't have the specific site number, but
7 it is the Solid Waste Act under title 27-A.

8 Q. Does the Oklahoma act, and I'm not trying to
9 make you a legal expert, so I can accept a general
10 answer.

11 A. Okay.

12 Q. Does the Oklahoma statute parallel the
13 federal statute?

14 MR. HAMMONS: Object to the form.

15 Q. (BY MR. MCDANIEL) Generally?

16 A. Yes.

17 Q. Now, what division within Oklahoma
18 Department of Environmental Quality handles the solid
19 and hazardous waste issues within the state?

20 A. The Land Protection Division.

21 Q. Who is in charge of that division?

22 A. Scott Thompson.

23 Q. Do you know what a RCRA citizen suit is?

24 A. I just generally know.

25 Q. Whereby a private citizen or entity can

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1 actually try to bring an action under the Federal
2 Solid Waste Disposal Act?

3 A. That's correct.

4 (Defendant's Exhibit 2 marked for
5 identification)

6 Q. Hand you what I have marked as Exhibit 2 to
7 your deposition. What I have attempted to do with
8 Exhibit 2, Mr. Thompson is to -- using West Law to
9 print off title 42, section 6972 of the United States
10 Code, titled Citizen Suits.

11 And I believe this is the citizen suit
12 provision under RCRA. Can you take a moment and tell
13 me if you agree with that?

14 A. That's what it appears to be, yes.

15 Q. I may ask you to refer back to that in a
16 second. But let me hand you what I have marked as
17 Exhibit 3 to your deposition. Tell me if you can
18 identify Exhibit 3, please.

19 (Defendant's Exhibit 3 marked for
20 identification)

21 A. It is an intent to file a citizen suit
22 pursuant to the Solid Waste Disposal Act by the
23 Attorney General's office, by the Attorney General.

24 Q. All right. Have you seen this before?

25 A. I don't have an independent recollection of

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1 having seen it. I may have seen it, but I don't
2 recall it.

3 Q. Would you turn to page 5 of the document,
4 please. See if you see your name as an individual who
5 received a carbon copy.

6 A. Yes, so I must have seen it.

7 Q. All right. You see on that same page where
8 it purports that a copy was sent to the administrator
9 of the environmental, Federal Environmental Protection
10 Agency, do you see that to the left of your name?

11 A. Yes. Yes, I do.

12 Q. And then also immediately left of your name,
13 it purports to have sent a copy to Mr. Richard Green,
14 the regional administrator of US EPA, Region 6 in
15 Dallas?

16 A. Yes.

17 Q. All right. Do you understand that this
18 letter purports to be a notice of intent to file a
19 citizen suit pursuant to Section 69 and 72-A-1-B of
20 the Solid Waste Disposal Act, relating to the Oklahoma
21 portion of the Oklahoma portion of the Illinois River
22 Watershed?

23 A. Yes.

24 Q. Okay. Let's, I want to you look back at
25 Exhibit 2 with me, please. On the first page under

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1 subsection A and then subsection capital B, it says,
2 "Against any person including the United States."

3 A. Uh-huh.

4 Q. That's the section cited as the basis for
5 this notice to file this citizen suit. Do you agree,
6 that's the same section?

7 A. Are you talking about 1-A and B.

8 Q. Just 1-B -- excuse me. Yes, subsection
9 A-1-B. Let me put my finger on it.

10 A. This right here?

11 Q. Yes, sir, just so you don't -- I know these
12 sections are confusing.

13 A. Yes.

14 Q. And refer back to the Attorney General's
15 notice letter on page 2, and see if you agree with me,
16 that that's the applicable basis for this lawsuit, or
17 for this RCRA citizen's order?

18 A. Yes.

19 Q. Okay. In the statute, Exhibit 2, turn over
20 one more page on the document.

21 A. This document?

22 Q. The statute, I'm sorry.

23 A. The statute?

24 Q. Yes. I want to ask you to look at the
25 notice requirement, and I believe the correct

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1 subsection would be little a to capital A, and that is
2 still section 6972. I think it begins, "No action may
3 be commenced under subsection little a-1, capital B of
4 this section prior to 90 days after the plaintiff has
5 given notice of the endangerment to," and then it
6 lists the administrator, then the state in which the
7 alleged endangerment may occur, and then third, "Any
8 person alleged to have contributed to or to be
9 contributing to the past or present handling, storage,
10 treatment, transportation or disposal of any solid or
11 hazardous waste referred to in subsection little a-1,
12 capital B of this section." Did I read that
13 correctly?

14 A. Yes, did you.

15 Q. Okay. On this notice provision, when it
16 refers to the administrator, would I be correct that
17 that refers to administrator of the EPA?

18 A. Yes.

19 Q. Okay. But if one who wants to commence a
20 citizen suit must also notify the state that's the
21 same requirement?

22 A. Yes.

23 Q. So that would include you and your office?

24 MR. HAMMONS: I'm going to object to the
25 form.

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1 THE WITNESS: I can't state that as a fact.
2 It could mean -- it could mean the governor, it could
3 mean the chief law enforcement officer of the state.
4 In many cases it means the governor.

5 Now, one would expect that we would receive
6 notice, but I can't say with certainty that it would
7 be us, it may be the governor's office that would
8 receive notice.

9 Q. (BY MR. MCDANIEL) All right. And in any
10 event, a person that wants to bring a citizen suit
11 under this section has to give this notice and wait 90
12 days before they file suit?

13 A. That's what I would -- that's what I would
14 interpret this to mean, yes.

15 Q. Now, let me -- I'm going to ask you if you
16 agree with me that there are at least three purposes
17 for the 90 day delay after the notice for filing this
18 suit.

19 A. Okay.

20 Q. Do you agree, sir, that one of the purposes
21 for the 90 day notice is to notify the EPA so that the
22 EPA can decide if it wants to begin an investigation
23 or enforcement action?

24 MR. HAMMONS: Object to the form.

25 THE WITNESS: Yes.

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1 Q. (BY MR. MCDANIEL) A second purpose would be
2 to notify the state where the endangerment is
3 purported to exist so that the state can decide it
4 wants to begin an investigation or enforcement action?

5 MR. HAMMONS: Object to the form.

6 THE WITNESS: Yes.

7 Q. (BY MR. MCDANIEL) And third would be to
8 notify the potential defendant so that they can
9 investigate and remedy the problem if deemed
10 necessary?

11 MR. HAMMONS: Object to the form.

12 THE WITNESS: I'm not sure I would
13 characterize it as they could remedy the form, but
14 certainly they would require notice that a problem
15 exists.

16 Q. (BY MR. MCDANIEL) Okay. Fair enough. Now,
17 to your knowledge with regard to the purported notice
18 that is Exhibit 3 to your deposition, to your
19 knowledge did EPA open an investigation of the claims
20 of violations under the Solid Waste Disposal Act
21 against these poultry companies or their growers?

22 A. Not to my knowledge.

23 Q. To your knowledge, did EPA initiate any
24 enforcement action under the Solid Waste Disposal Act
25 against these poultry companies, or their contract

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1 growers?

2 A. Not to my knowledge.

3 Q. In response to this purported notice, did
4 ODEQ initiate any enforcement action against these
5 poultry companies or any of their contract growers?

6 A. No.

7 Q. Has Oklahoma Department of Environmental
8 Quality made a finding that any of the defendants in
9 this lawsuit have violated the Solid Waste Disposal
10 Act?

11 MR. HAMMONS: Object to the form. Calls for
12 a legal conclusion.

13 THE WITNESS: Again, in the context that we
14 are talking about, no.

15 Q. (BY MR. MCDANIEL) Okay. And to use your
16 words, in the context of these allegations contained
17 in this purported notice of intent to file a citizen's
18 suit, has Oklahoma Department of Environmental Quality
19 made a finding that any poultry grower under contract
20 with any of the defendants in this lawsuit has
21 violated the Solid Waste Disposal Act?

22 MR. HAMMONS: Object to the form.

23 THE WITNESS: No.

24 Q. (BY MR. MCDANIEL) Has the Oklahoma
25 Department of Environmental Quality made a finding

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1 that poultry waste is a solid waste under RCRA?

2 MR. HAMMONS: Object to the form.

3 THE WITNESS: Well, again, the department
4 would have made a finding related to the disposal of
5 poultry waste in a solid waste landfill, or the
6 improper disposal of waste in what would be purported
7 to be a landfill.

8 But in the context of this lawsuit, the
9 answer is no.

10 Q. (BY MR. MCDANIEL) Has Oklahoma Department
11 of Environmental Quality made a finding that poultry
12 waste is a hazardous waste under RCRA?

13 MR. HAMMONS: Object to the form.

14 THE WITNESS: No.

15 Q. (BY MR. MCDANIEL) Now, in Oklahoma, poultry
16 waste handling, storage and use is regulated by
17 Oklahoma Department of Agriculture Food and Forestry,
18 am I right?

19 A. That's correct.

20 Q. Now, Oklahoma Department of Environmental
21 Quality does not regulate poultry waste as a solid
22 waste?

23 MR. HAMMONS: Object to the form.

24 THE WITNESS: The Department of
25 Environmental Quality would regulate the processing of

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1 poultry waste in a setting in which it was being
2 packaged and sold as a nutrient.

3 We would regulate air quality, we would
4 regulate any, process water disposal, in that context
5 we would regulate it. But that's the -- well, that is
6 the context in which we would regulate it.

7 Q. (BY MR. MCDANIEL) All right. I understand
8 what you're telling me. So let me put it this way, if
9 in the practice of land applying poultry waste on
10 agricultural lands, does the Oklahoma Department of
11 Environmental Quality regulate poultry waste in that
12 setting as a solid waste?

13 A. No.

14 Q. Does it regulate poultry waste in that
15 setting as a hazardous waste?

16 MR. HAMMONS: Object to the form.

17 THE WITNESS: No.

18 Q. (BY MR. MCDANIEL) Are you generally
19 familiar with the statutes in Oklahoma that pertain to
20 the handling, storage and use of poultry waste?

21 A. It would be very general.

22 Q. Are you satisfied that the personnel at the
23 Oklahoma Department of Agriculture Food and Forestry
24 are fulfilling their statutory duties with regard to
25 regulating the handling, storage and use of poultry

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1 waste?

2 MR. HAMMONS: Object to the form.

3 THE WITNESS: I don't have enough
4 information to make an independent judgment about
5 that.

6 Q. (BY MR. MCDANIEL) Do you have any reason to
7 doubt that Oklahoma Department of Agriculture Food and
8 Forestry is performing their statutory duties with
9 regard to poultry waste management?

10 MR. HAMMONS: Object to the form.

11 THE WITNESS: No. Sorry. No.

12 Q. (BY MR. MCDANIEL) All right. I understand
13 from our earlier discussion that ODEQ as sort of the
14 final backstop as it comes to environmental protection
15 in Oklahoma, has ODEQ elected to step in to assert
16 jurisdiction with regard to the regulation of poultry
17 waste management in Oklahoma?

18 A. As of this date, no.

19 Q. Has the Oklahoma Department of Environmental
20 Quality made a finding that the spreading of poultry
21 waste on lands within the Illinois River Watershed may
22 present an imminent and substantial endangerment to
23 human health?

24 MR. HAMMONS: Object to the form.

25 THE WITNESS: No.

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1 Q. (BY MR. MCDANIEL) Has Oklahoma Department
2 of Environmental Quality made a finding that the
3 spreading of poultry waste on lands within the IRW may
4 present an imminent and substantial endangerment to
5 the environment?

6 MR. HAMMONS: Object to the form.

7 THE WITNESS: No.

8 Q. (BY MR. MCDANIEL) Sir, are you generally
9 familiar with the Federal Comprehensive Environmental
10 Response Compensation and Liability Act?

11 A. CERCLA.

12 Q. Yes, sir, that's why we all say CERCLA,
13 because I had to carefully read that, not to step all
14 over it.

15 And some people, maybe lay people, but some
16 people call it the Superfund Act.

17 A. They do.

18 Q. In a broad conceptual way, tell us what that
19 statute is all about.

20 A. Well, as I understand it, it is generally
21 about the clean-up of hazardous waste sites within the
22 state, within the country, within the United States.

23 Q. You agree that it deals with releases or
24 threatened releases of hazardous substances?

25 A. I do.

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1 Q. Is there a state counterpart to the CERCLA,
2 federal CERCLA statute?

3 A. Yes.

4 Q. What are ODEQ's duties and responsibilities
5 under CERCLA, generally?

6 A. Well, the federal Superfund program itself
7 is a federal program, it is a federally run program,
8 Superfund is a federally run program.

9 There are on occasion times when DEQ will
10 operate clean-ups in lieu of the Federal Government
11 operating those clean-ups.

12 They also have non Superfund clean-ups that
13 occur under the Brownfields programs and other kinds
14 of remediation programs. I should call them
15 remediation programs.

16 So we have a support role relative to
17 Superfund itself, and then we operate remediation
18 programs at the state level.

19 Q. Which division within Oklahoma Department of
20 Environmental Quality handles Superfund hazardous
21 substances issues?

22 A. The Land Protection Division.

23 Q. Now, how many CERCLA or state equivalent
24 actions is Oklahoma Department of Environmental
25 Quality involved in today?

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1 A. Are you talking about voluntary clean-ups,
2 or ordered clean-ups, or are you talking about
3 Superfund clean-ups?

4 Q. Actually, I would like to include them all.

5 A. Oh, I would guess a couple hundred.

6 Q. Currently active sites --

7 A. It would be clean-up sites that are ongoing,
8 that are either under the Brownfields, the voluntary
9 clean-up program, or where we have a support role or
10 have assumed the role of the Federal Government in the
11 Superfund sites. That's a guess, but there is quite a
12 number of them.

13 Q. In any circumstance where the United States
14 EPA is acting as the lead agency on a site within the
15 state of Oklahoma, does your agency get involved to
16 some degree?

17 A. Yes.

18 Q. Okay. So --

19 A. In all of them.

20 Q. Okay. Now, I don't want to be confusing
21 with terminology. If I use the term Superfund site,
22 what does that mean to you?

23 A. It means the site that has qualified under
24 the national priorities list for Superfund at EPA, at
25 the Environmental Protection Agency.

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1 Q. If I use the term CERCLA site, could that be
2 a different, mean something different to you?

3 A. Oh, it could mean -- well, there is a
4 differentiation between -- I'm not an expert in this
5 area obviously. The differentiation between sites
6 under RCRA that are clean-up sites and sites under
7 Superfund.

8 So generally when somebody talks about a
9 CERCLA site, I do think of a Superfund site, yes.

10 Q. Okay. Can you tell me how many currently
11 open Superfund sites there are in Oklahoma? When I
12 say open, I mean it is simply, a site has not been
13 closed and the file closed.

14 A. Oh, there are -- I don't know the exact
15 number, there are 12 or 13 of them, as I recall. Some
16 of those have been -- some of those are under
17 operation and maintenance, so the remediation work has
18 been done and there is ongoing operation and
19 maintenance efforts in those.

20 Q. How large geographically is the largest
21 Superfund site in Oklahoma, to your knowledge?

22 A. Tar Creek.

23 Q. And geographically?

24 A. About 40 square miles.

25 Q. 40 square miles. When you step down -- Tar

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1 Creek is a rather remarkable site for a lot of
2 reasons, we don't have time to get into. But if Tar
3 Creek is at the top, as the biggest geographically,
4 when you step down from Tar Creek, what would be the
5 next largest?

6 A. Oh, I would say that there is a series of
7 sites that are -- well, the site, the smelter sites I
8 think probably would be the next set that we would be
9 talking about sites like the site that was cleaned up
10 at Bartlesville, the site that is under clean-up at
11 Blackwell.

12 Q. Tell me the general -- give me a sense of
13 the size of those sites.

14 A. Oh, we are talking about air deposition
15 here, so let's say generally five square miles.
16 That's a guess, but an educated guess.

17 Q. Are there any Superfund sites located within
18 the Illinois River Watershed?

19 MR. HAMMONS: Object to the form.

20 THE WITNESS: Nothing in the Illinois River
21 Watershed has been listed on the NPL list, no.
22 National Priorities List for Superfund.

23 Q. (BY MR. MCDANIEL) Are there any candidates
24 for listing on the national priorities list in the
25 Illinois River Watershed, to your knowledge?

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1 A. To my knowledge, no.

2 Q. What is a hazardous substance, and I
3 understand you could give me a 30 minute explanation,
4 and I'm asking you generally as administrator, what is
5 a hazardous substance?

6 A. Well, a hazardous substance is either a --
7 there is a whole list of -- it can be flammable, it
8 can be caustic, it can be -- but in general, it is a
9 material that has a high potential to cause harm in
10 human health and the environment.

11 Q. These substances are specifically
12 identified; is that correct?

13 MR. HAMMONS: Object to the form.

14 THE WITNESS: Yes, sir.

15 Q. (BY MR. MCDANIEL) Has ODEQ made a finding
16 that commercial fertilizer is a hazardous substance?

17 MR. HAMMONS: Object to the form.

18 THE WITNESS: No. We have not.

19 Q. (BY MR. MCDANIEL) Is commercial fertilizer
20 a hazardous substance under CERCLA?

21 MR. HAMMONS: Object to the form.

22 THE WITNESS: No, it is not.

23 MR. HAMMONS: Scott, can we take a quick
24 break?

25 MR. MCDANIEL: Well, if we have got 15

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1 minutes on the tape, can we make another 15 minutes?

2 MR. HAMMONS: I don't know if I can last
3 that long.

4 (Short break)

5 Q. (BY MR. MCDANIEL) Mr. Thompson, just before
6 we went back on the record I handed you what I have
7 marked as Exhibit 4 to your deposition, a copy of
8 Oklahoma Statutes Title 2, section 2-18.1, entitled,
9 Pollution of Air, Land or Waters, Unlawful, Powers of
10 Board, Orders and Penalties.

11 Have you seen this statutory section before?

12 (Defendant's Exhibit 4 marked for
13 identification)

14 A. I don't recall having seen it before, but I
15 would certify that it's part of the Oklahoma Statutes.

16 Q. Okay. And specifically what I want to draw
17 your attention to is -- well, first, subsections A and
18 B are structured very similar to the provision in
19 Defendant's Exhibit 1 with regard to the Environmental
20 Quality Code; in other words, you have a section,
21 subsection A defining it is unlawful to cause
22 pollution, subsection B, provision for finding of the
23 agricultural board, and it is structured similarly to
24 the statute you and I discussed early on this morning;
25 right?

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1 A. Yes.

2 Q. And I would ask you to look at subsection C
3 and tell me if you agree that as a matter of Oklahoma
4 law poultry manure and bedding is not a hazardous
5 substance as that term is defined under Oklahoma law?

6 MR. HAMMONS: Object to the form.

7 THE WITNESS: I agree.

8 Q. (BY MR. MCDANIEL) It is also not a
9 hazardous waste as that term is defined in Oklahoma
10 law?

11 MR. HAMMONS: Object to the form.

12 THE WITNESS: I agree.

13 Q. (BY MR. MCDANIEL) Has the Oklahoma
14 Department of Environmental Quality made a finding
15 that in the context of land applying poultry waste on
16 agricultural lands that poultry waste is a CERCLA
17 hazardous substance?

18 MR. HAMMONS: Object to the form.

19 THE WITNESS: We have not.

20 Q. (BY MR. MCDANIEL) Has Oklahoma Department
21 of Environmental Quality made a finding that the use
22 of poultry waste on agricultural lands in the Illinois
23 River Watershed is threatening the release of any
24 hazardous substance?

25 MR. HAMMONS: Object to the form.

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1 THE WITNESS: No.

2 Q. (BY MR. MCDANIEL) Has Oklahoma Department
3 of Environmental Quality made a finding that the use
4 of poultry waste on lands in the Illinois River
5 Watershed is or has released hazardous substances?

6 MR. HAMMONS: Object to the form.

7 THE WITNESS: No.

8 Q. (BY MR. MCDANIEL) In the context of CERCLA,
9 are you familiar with the term potentially responsible
10 party?

11 A. Yes.

12 Q. Tell me generally what that means.

13 A. That means that those folks that have
14 previously had ownership or stating really ownership,
15 have had something to do with the site potentially or
16 are responsible for the clean-up of that site.

17 Q. Okay. And it comes from section 107-A of
18 CERCLA, does that sound right?

19 A. If you say so.

20 Q. Okay. Now, within the context of CERCLA,
21 has the Oklahoma Department of Environmental Quality
22 determined that any of the defendants in this lawsuit
23 are PRPs or potentially responsible parties under
24 CERCLA?

25 MR. HAMMONS: Object to the form.

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1 THE WITNESS: We have not.

2 Q. (BY MR. MCDANIEL) Now, changing gears now,
3 sir. What is Oklahoma Department of Environmental
4 Quality's role with regard to the systems in Oklahoma
5 that produce drinking water to the public?

6 A. Our responsibility is to oversee those
7 facilities, the facilities public and private that
8 provide water to our citizens to ensure that they are
9 operating under the maximum contaminant levels for
10 drinking water as set forth in the state drinking --
11 state drinking water act and the Oklahoma Clean Water
12 Act.

13 Q. Can you give me a general definition of
14 disinfection by-products?

15 A. Well, generally a disinfection by-product is
16 a carcinogen that is -- that occurs with the use or I
17 guess improper use of chlorine in drinking water.

18 Q. Are there limits for the maximum
19 concentrations of disinfection by-products in finished
20 drinking water in Oklahoma?

21 A. Yes.

22 (Defendant's Exhibit 5 marked for
23 identification)

24 Q. Sir, I'm handing you what I have marked as
25 Exhibit 5. Do you recognize that?

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1 A. Yes, it is a fact sheet from the department.

2 Q. If I can, let me take these other exhibits
3 away from you, just to keep from getting a mess in
4 front of you.

5 A. Okay.

6 Q. Who generated this document?

7 A. Well, it was generated by the DEQ.

8 Q. Now, there are multiple types of
9 disinfection by-products. Do you agree?

10 A. I agree.

11 Q. Now, I pulled this off of ODEQ's website,
12 and I could find only a fact sheet on trihalomethanes,
13 this one, Exhibit 5. Is there a reason there are not
14 fact sheets on DEQ's website for any of the other
15 disinfection by-products?

16 A. I really -- no, there should -- there should
17 be for all disinfection by-products, for instance,
18 haloacetic acid, and then to some extent total organic
19 compounds. I don't know. If there is not one for
20 those, I don't know why there isn't.

21 Q. Okay. The third paragraph, and it begins,
22 "EPA has set," do you see that?

23 A. Yes.

24 Q. Sir, would you read that paragraph aloud,
25 and it continues to the next column?

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1 **A.** "EPA has set standards for THMs in water
2 because there is a slight possibility of an increased
3 risk of bladder or colorectal cancer over a lifetime
4 of drinking water with THMs over 80 parts per
5 billion."

6 "EPA estimates drinking two liters of water
7 containing 100 parts per billion THMs everyday for 70
8 years could result in three extra cases of cancer for
9 every 10,000 people."

10 "Slight risk of increased cancer occurs only
11 after decades of drinking water with elevated THMs.
12 There is no immediate risk from the water with THMs
13 above 80 parts per million -- I'm sorry, parts per
14 billion."

15 "THMs do not pose a high health risk
16 compared to waterborne diseases, but they are among
17 important water quality issues faced by public water
18 supply systems."

19 **Q.** All right. With regard to how it describes
20 this level of health risk associated with
21 trihalomethanes in water, refer back to that text and
22 see if you agree with this. If 10,000 people drink
23 two liters a day of water at 100 parts per billion
24 trihalomethanes for 70 years, there is a risk that
25 there will be three additional cases of cancer among

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1 the group then would be expected if they had not
2 consumed the water with high trihalomethanes?

3 A. I would say that that is correct, a correct
4 interpretation of this language and of EPA's
5 estimates.

6 Q. Okay. And so ODEQ's position is that,
7 quote, there is no immediate risk from the water with
8 trihalomethanes above 80 parts per billion, closed
9 quote.

10 A. No immediate risk, that's correct.

11 Q. All right. Now, the water systems in
12 Oklahoma are required to submit their tests for
13 disinfection by-products to ODEQ; correct?

14 A. That's correct.

15 Q. What does ODEQ do with these reports?

16 A. Well, we -- most of the time they send us
17 their water samples and we analyze them. Where they
18 do not, we report out the findings. We report the
19 findings.

20 Q. Who do you report to?

21 A. Well, we would report back to the facility.

22 Q. Okay.

23 A. Now, if the next question is if there is a
24 violation, then the department would issue a notice of
25 violation to the facility.

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1 Q. Do you know generally what are some of the
2 potential causes for a municipal treatment system to
3 develop excessive levels of disinfection by-products?

4 A. Generally it is the, either they are
5 chlorinating above a certain level or they are
6 introducing chlorine at points in the system that
7 would cause trihalomethanes or disinfection
8 by-products to occur.

9 Q. Are there areas in Oklahoma where the
10 occurrence of disinfection by-products in excess of
11 the regulatory limits is persistent?

12 A. I don't know that there are areas,
13 geographic areas?

14 Q. Yes, sir.

15 A. I'm not aware that there is -- that this has
16 been differentiated -- that we have done an analysis
17 related to geographic areas.

18 Q. I gather that there are some particular
19 systems or municipalities that have had some
20 persistent problems?

21 A. That's correct.

22 Q. Okay. But not differentiated based upon
23 where they are in the state?

24 A. Not that I'm aware of.

25 Q. Of the systems that you apparently are aware

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1 of, at least generally, that have had persistent
2 problems, have the causes of those problems been
3 identified?

4 A. We are making -- systems are making progress
5 in identifying the causes, and in correcting -- I
6 don't know that they have made -- let me put it this
7 way. When there is a violation, notice of violation
8 is issued, and then a consent order, that gives the
9 community, puts the community on a schedule to solve
10 the problem.

11 And so we have -- we are reducing the number
12 of violators. Now, disinfection by-products is a very
13 system by system problem. And so it would be
14 difficult to draw -- I think it would be difficult to
15 draw a conclusion that generally it is this problem.

16 If I could, our problem with disinfection
17 by-products has been that you can't do a general
18 outreach on these issues, so it would be much easier
19 and much quicker to solve the problem if you could do
20 so.

21 It is pretty much a system by system
22 assessment.

23 Q. Approximately how many water treatment
24 systems, drinking water treatment systems are there in
25 the Oklahoma portion of the Illinois River Watershed,

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1 if you know?

2 A. Oh, I don't really know. I don't really
3 have that answer. There is a lot of rural water
4 systems in the state. Obviously the communities have
5 drinking water systems. I really would -- I would
6 hate to guess. I could find that out for you, but I
7 would hate to guess at the number, because there are
8 an awful lot of very small rural water systems in the
9 state, all that are under our jurisdiction.

10 Q. I have seen it estimated in the neighborhood
11 of 18, and I say in the neighborhood. Does that
12 strike you as a reasonable --

13 A. I would -- I guess I wouldn't argue with
14 that number.

15 Q. If you don't know, you don't know.

16 A. I just don't know. I mean, there is -- I
17 just really don't know.

18 Q. If you look at the state of Oklahoma as a
19 whole, has the incidents of disinfection by-products
20 reported in excess of the regulatory limits for the
21 systems in the Illinois River Watershed been higher
22 than the state as a whole?

23 A. I just don't have that information.

24 Q. Has the Oklahoma Department of Environmental
25 Quality made a finding that any incident of

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1 disinfection by-products in excess of regulatory
2 limits for any water treatment system in the Oklahoma
3 portion of the Illinois River Watershed was caused by
4 the use of poultry waste in the Illinois River
5 Watershed?

6 MR. HAMMONS: Object to the form.

7 THE WITNESS: No.

8 Q. (BY MR. MCDANIEL) Now, what is Oklahoma
9 Department of Environmental Quality's role with regard
10 to the quality of recreational waters?

11 A. Well, our specific statutory authority rest
12 with point source discharge, or point sources of
13 pollution, both industrial and municipal.

14 Q. Does ODEQ review the data collected from
15 sampling of rivers and streams in Oklahoma?

16 A. Oh, it does. We have also authority to do
17 TMDLs.

18 Q. Now, the data from this surface water
19 sample -- were you going to say something else?

20 A. Yes.

21 Q. Go ahead.

22 A. The DEQ is responsible for -- I'm sorry, no,
23 we are responsible to do TMDLs. And in doing so, we
24 do review data from other agencies. Most of the data
25 in the state is collected by other agencies.

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1 **Q.** The data, surface water quality data, it
2 includes data related to fecal indicator bacteria;
3 correct?

4 **A.** Yes.

5 (Defendant's Exhibit 6 marked for
6 identification)

7 **Q.** I'm handing you what I have marked as
8 Exhibit 6, sir. Identify that for me, please.

9 **A.** This is a general warning to swimmers in
10 untreated bodies of water that we issue two or three
11 times each summer.

12 It does specifically mention PAM, primary
13 amoebic meningitis, which is an issue that has caused
14 the death of several small children in the state. But
15 it is in general a general warning about those things
16 that one should do if one chooses to swim in
17 an untreated body of water.

18 **Q.** Now, I pulled this down off of ODEQ's
19 website; right?

20 **A.** Uh-huh.

21 **Q.** Now, you said you issue it, or the agency
22 issues it two or three times a year. What does
23 issuing it mean?

24 **A.** I'm sorry, this is available all of the time
25 on our website, but we issue press releases, just

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1 before Memorial Day, just before the 4th of July, just
2 before Labor Day, advising citizens of the precautions
3 that they can take if they choose to recreate in those
4 areas.

5 Q. Is that a standard operating procedure,
6 every year those are your dates that you send these
7 reminders out?

8 A. Yes.

9 Q. Can you tell me when this document was
10 developed?

11 A. Oh, this document or its predecessor
12 document was developed probably seven or eight years
13 ago.

14 Q. The first paragraph, please read that aloud.

15 A. "When dealing with lakes, rivers and
16 streams, one can be almost certain that some bacteria,
17 viruses, protozoa and other microorganisms are present
18 in the water. Some of these organisms are indigenous
19 to surface waters, others are carried from wastewater
20 sources including septic systems and runoff from
21 animal and wild fowl areas. Swimmers themselves are
22 also sources of bacteria."

23 Q. Would you agree that bacteria and parasites
24 are present to some degree in nearly all surface
25 waters in Oklahoma?

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1 A. I would.

2 Q. Down below the main text in the box, there
3 is a list of precautions for swimmers, and I think
4 there is about 14 specific recommendations?

5 A. Uh-huh. That's correct, yes.

6 Q. Does this list of precautions, is it ODEQ's
7 intention that these precautions would apply
8 state-wide?

9 A. It is.

10 Q. Was this fact sheet developed due to a
11 particular concern with recreational waters in the
12 Illinois River Watershed?

13 A. No.

14 Q. Is there a particular warning or advisory
15 that DEQ has developed for the Illinois River
16 Watershed?

17 A. Yes.

18 Q. Has it been issued?

19 A. Yes.

20 Q. When was that issued?

21 A. It was issued last summer.

22 Q. Tell me the circumstances that led to that
23 decision to issue.

24 A. After a discussion with the Secretary of
25 Environment related to the number of people, then

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1 Secretary of Environment Miles Tolbert, about the
2 number of people recreating in the Illinois River, the
3 agency made a decision because of those numbers to do
4 a specific warning for that river.

5 Q. Now, is it the number of persons using the
6 area that makes the Illinois River worthy of special
7 attention?

8 A. Yes.

9 Q. Was there anything in particular about the
10 water quality or changes in water quality that
11 triggered the decision to issue the specific notice?

12 A. No.

13 Q. Do you recall how the notice for the
14 Illinois River area differs from the text we see here
15 in Exhibit 6?

16 A. I don't recall specifically, other than I
17 believe that it notes the use of the watershed for
18 recreation, but the precautions are the same.

19 Q. And so it identifies both the risks and how
20 one can reduce their exposure to the risks the same?

21 A. Yes.

22 Q. You mentioned a few moment ago this primary
23 amebic meningoencephalitis?

24 A. Yes.

25 Q. PAM?

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1 A. Thank you.

2 Q. Well, we will see. So apparently there have
3 been instances where that has occurred?

4 A. That is correct.

5 Q. Now, I'm from Tulsa, not that you care, but
6 a year or two ago there were quite a bit of media
7 attention to some small children that became sick who
8 were playing on, I think they call them, a splash pad.
9 You know where water is sprayed and kids play in a
10 park?

11 A. Yes.

12 Q. Is that -- was that the disease involved in
13 that instance?

14 A. I hate to say for certain, I don't believe
15 that was the case.

16 Q. Okay.

17 A. This was -- this was a micro organism that
18 is found in very warm and very stagnate water. And
19 very unfortunately on a couple of separate occasions
20 very small children were -- died as a result of this
21 particular disease from swimming in waters that I
22 previously described.

23 And so in our swimming warnings, we make
24 sure that people are aware of that specific issue.

25 Q. Has there --

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1 A. Although it is rare, it does occur.

2 Q. Has there been any occasion where this
3 organism that causes PAM, has it ever been identified
4 in any of the surface waters in the Illinois River to
5 your knowledge?

6 A. Not to my knowledge.

7 Q. Has the Oklahoma Department of Environmental
8 Quality made any findings that levels of fecal
9 indicator bacteria in the Illinois River Watershed
10 surface waters in excess of regulatory limits was
11 caused by any operations associated with any defendant
12 in this case?

13 MR. HAMMONS: Object to the form.

14 THE WITNESS: No.

15 Q. (BY MR. MCDANIEL) Sir, I'm handing you what
16 I have marked as Exhibit 7 to your deposition.
17 Identify that for the record, please.

18 (Defendant's Exhibit 7 marked for
19 identification)

20 A. This is a fact sheet issued by the
21 department related to biosolids generated during the
22 treatment of sewage, sanitary sewage.

23 Q. This is published by ODEQ?

24 A. It is.

25 Q. Give us a general definition of what a

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1 biosolid is.

2 A. Well, it is the remains, the solid remains
3 from the treatment of sewage.

4 Q. Now, are there two primary ways of disposing
5 of or handling biosolids, one being it can be land
6 filled at a proper facility or it can be land applied,
7 according to a proper permit?

8 A. That's -- that is true. Generally true. We
9 are, although there is a lot of work being done
10 related to the composting of biosolids, which can also
11 be land applied.

12 Q. If you're going to go to the trouble to
13 compost biosolids, is it within intent that it
14 ultimately will be land applied?

15 A. Yes, it is.

16 Q. And you don't spend money composting and
17 putting it in a landfill?

18 A. No, it will be land applied.

19 Q. So the biosolids that are land applied, the
20 intention is to derive value from the biosolids as
21 fertilizer and soil amendment?

22 A. That's correct.

23 Q. On Exhibit 7 on the right hand column, the
24 first paragraph that begins, "After treatment," would
25 you read that aloud, please?

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1 **A.** "After treatment and processing, biosolids
2 can be recycled and applied as fertilizer to improve
3 and maintain productive soils and stimulate plant
4 growth. The controlled land application of biosolids
5 complete a natural cycle in the environment by
6 treating sewage, sludge, it becomes biosolids that can
7 be used as a valuable fertilizer instead of taking
8 place in -- taking up space in a landfill."

9 **Q.** So you would agree that the land applying
10 biosolids as a fertilizer completes a natural cycle in
11 the environment?

12 **A.** I would agree that the controlled land
13 application of biosolids does that, yes.

14 **Q.** Now, in the paragraph below, I don't want to
15 ask you to read all of that into the record.

16 **A.** Good.

17 **Q.** It is kind of long and I'm not trying to use
18 your time in that way.

19 **A.** That's fine.

20 **Q.** Read that next paragraph to yourself, then I
21 want to ask you a couple of questions about it.

22 **A.** Okay.

23 **Q.** It is ODEQ's position that biosolids qualify
24 as a fertilizer and a soil amendment; true?

25 MR. HAMMONS: Object to the form.

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1 THE WITNESS: Yes.

2 (Defendant's Exhibit 8 marked for
3 identification)

4 Q. I'm handing you what I have marked as
5 Exhibit 8. Identify that for the record, please.

6 A. It is a fact sheet from the department that
7 talks about the management of biosolids in Oklahoma,
8 and more specifically talks about nutrient levels.

9 Q. Nutrient levels in biosolids?

10 A. That's correct.

11 Q. Now, what -- for what purpose was this fact
12 sheet developed?

13 A. I don't know specifically, but I would
14 assume that it was provided to communities to
15 encourage farmers to use biosolids on their property,
16 and to encourage the use of biosolids, properly
17 applied biosolids.

18 Q. Rather than taking up space in landfills?

19 A. That's right.

20 Q. And I understand that nutrient levels in
21 biosolids can certainly vary for numbers of reasons,
22 including the input as well as the treatment
23 methodologies, but do you consider these levels of the
24 primary nutrients in biosolids to be a reasonable
25 approximation?

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1 A. I would say that's correct.

2 Q. Does the Oklahoma Department of
3 Environmental Quality allow the land application of
4 biosolids in the Illinois River Watershed?

5 A. It does not.

6 Q. When did that take place, or excuse me, let
7 me rephrase the question. Are you saying there is a
8 prohibition against the land application of biosolids
9 in the Illinois River Watershed?

10 A. Yes.

11 Q. And was that by statute or by rule?

12 A. It was done by rule.

13 Q. When was that?

14 A. I really don't know. It has been -- it has
15 been a number of years, but I couldn't give you the
16 specific date.

17 (Defendant's Exhibit 9 marked for
18 identification)

19 Q. I'm handing you an e-mail marked as Exhibit
20 9 to your deposition, and I will just, for your
21 benefit, sir, I will tell you, do you see the numbers
22 at the very bottom of the page, where it says OSRC and
23 a series of numbers?

24 A. Oh, yes.

25 Q. Okay. We call those Bates numbers. Those

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1 are production numbers, and this document was obtained
2 from the files of the Oklahoma Scenic River
3 Commission, that's the production number.

4 A. Okay.

5 Q. This is -- purports to be an e-mail from Jon
6 Craig to ODEQ to Glen Jones of ODEQ, dated May 3rd,
7 2004.

8 I don't see that the e-mail itself that you
9 were copied, so I presume you haven't seen it.

10 A. Okay.

11 Q. But first flip to the second page of the
12 exhibit. Second page is a letter from George R.
13 Stubblefield, Chairman of the Scenic Rivers Commission
14 and Ed Fite, Administrator of the Scenic Rivers
15 Commission to you, dated April 28th, 2004.

16 Do you recognize this letter?

17 A. Yes.

18 Q. All right. The letter starts, "Dear
19 Director Thompson. At the Oklahoma Scenic Rivers
20 Commission regular meeting on April 20th, 2004, the
21 board of commissioners discussed and took action in
22 regard to the land application of industrial and
23 municipal wastewater sludge in the scenic river
24 watersheds. The commissioners voted unanimously to
25 adopt a resolution, opposing utilization of industrial

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1 or municipal wastewater sludge for land application."

2 "In the board's discussion it was apparent
3 that commissioners feel that land application of the
4 sludge would place highly concentrated amounts of
5 nutrients in the watershed, it would undermine efforts
6 to control the impact of nutrients on water quality."

7 Did I read that correctly?

8 A. That's correct, uh-huh.

9 Q. While I gather that by implication at the
10 time this was written in April 2004, the rule you
11 mentioned a few moments ago had not been issued?

12 A. I would have to get my -- I would have to
13 get you the dates. I don't know that that's
14 necessarily the case. Could I --

15 There has been -- there has been an issue
16 related to the use of compost in sludge in the
17 watershed, which we have continued to allow. And so
18 related to the dates of when general application of
19 biosolids in the watershed, when that rule occurred
20 and whether this document relates to that or to the
21 issue of biosolids, I would just have to track down.

22 Q. Okay. Mr. Jon Craig, who is he?

23 A. He is the director of the Water Quality
24 Division.

25 Q. And does he report to you?

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1 **A.** He does.

2 **Q.** All right. Let's look at his e-mail, the
3 first page and see if there is -- if any of his
4 comments assist this. The fourth paragraph, he says,
5 "To begin with, we do know that there are neither
6 statutes nor regulations in Oklahoma which prohibit
7 the land application of municipal biosolids or
8 industrial sludge."

9 **A.** Uh-huh.

10 **Q.** The plain reading of this appears to state
11 that as of May 3rd, 2004 there were no restrictions
12 whatsoever. Is that a fair reading?

13 **A.** I am just going to reserve judgment on that
14 until I'm able to determine the chronology of events.
15 I mean, I would -- I guess I could say one could draw
16 that conclusion from this e-mail, but I reserve -- I
17 really need to look at the chronology of events on
18 that issue, because I don't want to misspeak.

19 **Q.** Okay. The e-mail from Mr. Craig mentions
20 that Miles Tolbert met with Steve Thompson recently,
21 and I'm reading the second paragraph.

22 **A.** Right.

23 **Q.** And asked him to brief him on the current
24 related activities.

25 **A.** Yes.

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1 Q. Do you have a recollection of that meeting?

2 A. Not a specific recollection, but I don't
3 doubt that it occurred.

4 Q. And it appears that Mr. Craig is telling
5 Mr. Jones, we need to gather information about
6 biosolids generation and utilization in scenic river
7 watersheds?

8 A. That's correct.

9 Q. Okay. What was the outcome of this, I
10 should say to begin with, the resolution from the
11 Scenic River Commission and then the involvement of
12 the Oklahoma Department of Environmental Quality on
13 biosolids use in the watershed?

14 A. I don't have a specific recollection of
15 that. I just don't. I'm not sure that this goes
16 exactly to the issue of when biosolids were restricted
17 in the watershed. There may be -- there may be
18 situations, there may have been a situation where
19 someone was improperly disposing of biosolids in the
20 watershed.

21 So one could read it, could read it that
22 way. I would just have to refresh my memory relative
23 to the context of this before I could give an accurate
24 description of what happened.

25 Q. All right.

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1 **A.** It could have been reported -- it could have
2 been reported to Mr. Tolbert that someone was
3 improperly, or that we were -- that we had approved a
4 site within the watershed when we believed that it was
5 not in the watershed.

6 I mean there is a lot of scenarios that this
7 could have -- this document could be related to, but I
8 just -- I don't have as we sit here today an
9 independent recollection of exactly what that means.

10 **Q.** Did this resolution passed by the Scenic
11 Rivers Commission referenced in the April 2004 letter
12 to you, did it prompt any rule changes regarding the
13 management of biosolids?

14 **A.** I just don't know at this point. It is
15 within the realm of possibility that it could have,
16 but without refreshing my memory on the events, I
17 would hate to say definitively one way or the other.

18 **Q.** What is it about composted biosolids that
19 makes that material permissible in the Illinois River
20 Watershed as a soil amendment, but uncomposted is not?

21 **A.** It is my understanding that we believe that
22 there is, are a couple of things. There may be some
23 nutrient reduction and composting tends to stabilize
24 the nutrients in place. But our folks, Mr. Craig is
25 more of the expert on this, believed that it was an

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1 appropriate use of, the compost is an appropriate use
2 as opposed to uncomposted biosolids.

3 Q. If uncomposted biosolids can only be land
4 applied at a site pursuant to a permit; is that right?

5 A. That's correct.

6 Q. And ODEQ is the permit, permitting
7 authority?

8 A. That is correct.

9 Q. Does that apply equally to composted
10 biosolids?

11 A. I believe that to be the case, but I would
12 have to ask that question.

13 Q. Well, I'm just curious if Ms. Smith could go
14 down there with her pickup truck and get some and take
15 it back and put it on her rose garden?

16 A. I think that's correct.

17 Q. You think she can?

18 A. Yes. In fact, I'm pretty sure that's
19 correct.

20 Q. All right. When you were in the office of
21 the Secretary of Environment and you gave me the dates
22 early on, what were your duties there?

23 A. For the most part, my duties were to work
24 through the remaining issues in the development of the
25 Department of Environmental Quality. Enabling statute

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1 occurred in July 1, became effective July 1 of 1992,
2 but the agency didn't open its doors, wasn't
3 permanently established until 1993, July 1 of 1993.

4 So there were any number of negotiations
5 between city, county health departments, between other
6 agencies. There were issues related to the transfer
7 of employees from one agency to the other. There was
8 issues related to funding, financing. There were
9 issues related to enabling statutes, the transfer of
10 statutes from the different agencies or portions of
11 different agencies that came together to create the
12 Department of Environmental Quality.

13 And so almost -- well, I spent many long
14 hours and many long days working through with
15 Secretary Eaton and with the commissioner -- well,
16 both the commissioner of health and the commissioner,
17 the deputy commissioner of health for environmental
18 services at the Health Department, those kinds of
19 issues.

20 The Labor Department was involved, the
21 Oklahoma Water Resources Board were involved. So
22 almost exclusively that's what I worked on during that
23 year.

24 Q. When Oklahoma passed the Environmental
25 Quality Act in, you said '92?

A. Uh-huh.

Q. That brought about a major restructuring of environmental jurisdiction and responsibilities among existing and newly created state agencies?

A. Major is kind of an interesting word.

Q. Significant?

A. The purpose of the creation of the Department of Environmental Quality, the specific purpose for our creation really was to get NPDS delegation, national discharge pollutant elimination system delegation from the Federal Government, from EPA.

That, it became clear at some point that EPA was never going to delegate the program, as long as the municipal and industrial permitting for point source discharges was split between the Oklahoma Water Resources Board and the Department of Health, which was the case at that time.

So the motivating factor was simply to move the permitting portions of the industrial permitting portions of the state law into a new agency, along with the other, the air quality issues and solid waste issues, other waste issues that were in the Health Department.

It became clear over time that they were

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1 going to be unsuccessful in transferring it from one
2 existing agency to another, so quite frankly the
3 legislature decided to create a new agency to do that.

4 There was some components of the Department
5 of Labor related to asbestos that were transferred,
6 but I would say that most of the jurisdictions that
7 now reside in the Department of Environmental Quality,
8 or ultimately resided within the Department of
9 Environmental Quality resided within the Department of
10 Health and the Oklahoma Water Resources Board.

11 Q. When you were in the Secretary of the
12 Environment's office, was Ms. Eaton the only secretary
13 you served with?

14 A. Yes.

15 Q. Now, at one point you, or prior to that, you
16 were the director of the Oklahoma Department of
17 Pollution Control?

18 A. That's correct.

19 Q. What is that? What was that?

20 A. The Department of Pollution Control really
21 had three functions. We were a small eight person
22 agency that received federal funding and distributed
23 amongst the agencies with the appropriate state
24 jurisdiction, state water funding.

25 We were the -- we operated the complaints

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1 hotline that now resides within the Department of
2 Environmental Quality, but at that point it was within
3 our jurisdiction to operate the complaints hotline and
4 have specific jurisdiction ourselves so we would refer
5 those complaints to the agencies with jurisdiction and
6 would follow those complaints to resolution.

7 And then we were responsible for the 208
8 Water Quality Management Plan, wherein changes to
9 discharges and water quality standards and things of
10 that nature are documented based on most state and
11 federal law.

12 Those are the three things that we, that
13 were the responsibility of the agency. Although it is
14 fair to say that during my tenure there, even prior
15 to -- when I came on, Governor Walters had decided to
16 create this new agency, so even prior to being
17 secretary of, assistant secretary of the environment,
18 I worked on the creation of a new agency at that time
19 also.

20 Q. When the reorganization, the redesignation
21 was accomplished in '92 and '93, did the pollution
22 --Department of Pollution Control cease to exist?

23 A. It did.

24 (Defendant's Exhibit 10 marked for
25 identification)

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1 Q. Mr. Thompson, I'm handing you what I have
2 marked as Exhibit 10 to your deposition. If you want
3 to take a moment and look through that.

4 This document was obtained from the files of
5 the Oklahoma Water Resources Board, as indicated by
6 the Bates number. The cover sheet has a transmittal
7 from Derek Smithee, OWRB to Chuck Bennett, ADPC and E,
8 March 1st, 1996.

9 Do you know who Mr. Derek Smithee is?

10 A. I do.

11 Q. And who is he?

12 A. He is the water quality division director at
13 the Oklahoma Water Resources Board.

14 Q. Do you know what his position was at the
15 time, 1996?

16 A. I believe -- no, I'm not sure. He was
17 either a staff person in the Water Quality Division or
18 he was the director, but I don't recall when he took
19 over that responsibility.

20 Q. Does Chuck Bennett, do you know who
21 Mr. Bennett is?

22 A. Yes, I know who he is. He was the water
23 quality division director at the predecessor, I don't
24 know if it is predecessor agency, it is the -- it is
25 what the Arkansas Department of Environmental Quality

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1 used to be called.

2 Q. Arkansas Department of Pollution Control and
3 Environment?

4 A. I believe that's right.

5 Q. Sounds good.

6 A. Or ecology, but I believe it was
7 environment. I don't know.

8 Q. I won't argue with you. Let's look at, I
9 guess it is actually the fourth page of the exhibit,
10 it has a header Arkansas/Oklahoma Governor's Joint
11 Environmental Task Force. Do you see that?

12 A. Uh-huh, I do.

13 Q. It says June 3rd, 1992, Tulsa Chamber of
14 Commerce. It looks like some minutes from a meeting?

15 A. Uh-huh.

16 Q. Were you -- let's see, I believe it does
17 show you present?

18 A. Yeah, apparently I was.

19 Q. I gather it was memorable then wasn't it?
20 Do you remember this?

21 A. Oh, I recall a lot of meetings. I would be
22 hard pressed to recall this one specifically, but I'm
23 not -- no question that I was there. I mean, there
24 were a lot of meetings.

25 This was a task force that was put together,

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1 as I recall, by Governor Walters and Governor Tucker,
2 then Governor Tucker of Arkansas to discuss issues
3 important to both, to both agencies. It was ecology.
4 If you look here on the discussion of Arkansas water
5 quality standards.

6 Q. Uh-huh. Okay?

7 A. Just down there in the second paragraph, it
8 says pollution control and ecology, so my memory isn't
9 as bad as one would think.

10 Q. Okay. You said the purpose was to discuss
11 environmental issues with concern to both states?

12 A. That's my recollection of it.

13 Q. What particular issues was this task force
14 addressing?

15 A. Oh, I'm sure that impacts to the Illinois
16 River were a part of it. There may have been others.
17 There was --

18 Q. Well, I have seen --

19 A. But I would say that just that, just issues
20 of environmental concerns to both states, water
21 quality probably being the premiere issue.

22 Q. I have seen a lot of different task forces
23 with lots of different names. So because I'm
24 confused, I'm hoping you will help me, if you can.

25 A. Okay.

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1 Q. This particular task force, do you know how
2 long it existed, or functioned?

3 A. I suspect that it lasted until the -- no, I
4 don't. I mean, it was not long lived. Maybe two or
5 three years, but I don't know exactly.

6 Q. What did it accomplish, if anything?

7 A. Well, I think we both went away with a
8 better understanding of the issues that both states
9 faced, but I don't know that you could point to some
10 statutory or operational change that occurred as a
11 result of that task force.

12 MR. MCDANIEL: Why don't we just take our
13 lunch break now before I change topics?

14 (Lunch break from 11:40 to 12:30)

15 Q. (BY MR. MCDANIEL) Mr. Thompson, would you
16 give us a general definition of what a total maximum
17 daily load is?

18 A. Yes, that's the calculation of the
19 contribution of load pollution by all sources of
20 pollution to a waterbody, and what percentage
21 contribution is done by all of those contributing
22 factors.

23 Q. Is it a mechanism through which you can
24 allocate back to sources allowable loads that will
25 meet the water quality objective?

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1 A. It is.

2 Q. In this Exhibit 10 --

3 A. Although, typically for point sources a
4 waste load allocation is done that is a part of the
5 TMDL, but yes, you could back calculate into it.

6 Q. Okay. Let me refer you again to Exhibit 10
7 we were looking at before the lunch break.

8 I want to you look at page 3 of these
9 minutes, and the Bates number down in the bottom
10 right-hand corner, it is actually 583.

11 A. Page 3.

12 Q. It shows page 3 at the top, and then 583 at
13 the bottom.

14 A. Okay.

15 Q. The very last paragraph Mr. Bennett. It
16 says in the minutes, "Mr. Chuck Bennett stated that
17 one possible solution is to approach the Illinois
18 River basin with a TMDL process. He went on to say
19 that a TMDL process may be the only approach to
20 holistically look at the problems within the basin and
21 resolve it."

22 "Mr. Dillon agreed that the TMDL approach
23 was an allowable option."

24 Then let's turn to the next page. Under
25 discussion of Arkansas River Compact Commission, the

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1 third paragraph, it says, "Mr. Thompson stated that in
2 his opinion the EPA, state legislatures and the
3 general public might be more amenable to a bi-state
4 effort as opposed to a unilateral one. He went on to
5 say that the TMDL mechanism could allow for economic
6 progress and growth as well as protection from the
7 basin."

8 "Mr. Ken Smith stated that he would like to
9 see staff members from the states meet and discuss the
10 possibilities of developing a TMDL process that would
11 be agreeable to both states and place the item on the
12 next meeting agenda for discussion."

13 Do you agree with the statement that's
14 attributed to you in these minutes, sir, that the TMDL
15 process allows for economic progress growth while
16 protecting the waters in the basin?

17 A. I agree that the mechanism itself could do
18 that.

19 Q. Okay. So the possibility of employing the
20 TMDL process for the Illinois River Watershed was at
21 least one of the items on the agenda of the
22 Arkansas/Oklahoma governor's joint environmental task
23 force. Do you agree with that?

24 A. Yes.

25 Q. Now, when, to your knowledge, did the

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1 discussion of Oklahoma implementing TMDLs for the
2 Illinois River Watershed first begin?

3 A. Oh, I don't know the exact date, but there's
4 been ongoing discussions about it for quite a while,
5 long time. Years.

6 Q. The United States Environmental Protection
7 Agency has been encouraging Oklahoma to implement
8 TMDLs in the Illinois River Watershed since at least
9 this 1992 year?

10 A. That's probably true.

11 (Defendant's Exhibit 11 marked for
12 identification)

13 Q. All right, Mr. Thompson, I'm handing you
14 what I have marked as Exhibit 11 to your deposition.
15 If you want to look it over and tell me if you
16 recognize it.

17 A. Apparently it is a letter I received in,
18 toward the end of 1992.

19 Q. All right.

20 A. I don't have any reason to believe that I
21 didn't receive it in 1992.

22 Q. Okay. It is from a Richard Hoppers, PE,
23 Chief Water Quality Management Grants, United States
24 Environmental Protection Agency, Region 6, Dallas, to
25 you at the time you were director of the Oklahoma

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1 Department of Pollution Control, couple dates stamped
2 on here, December 4th, 1992 and then received by your
3 department in December 10th, 1992. It is a little
4 blurry.

5 A. Uh-huh.

6 Q. Do you recall the subject matter of this
7 discussion with the Environmental Protection Agency?

8 A. I would have to read it.

9 Q. Well, go ahead and take a moment and read
10 through it, please.

11 A. Okay.

12 Q. All right. The first paragraph states,
13 "Dear Mr. Thompson, As requested we have reviewed the
14 draft annual report to the Governor of Oklahoma and
15 the Pollution Control Coordinating Board. Generally
16 the report fails to support the goals of the mission
17 statement and will interfere with ongoing efforts to
18 foster interstate cooperation in maintaining and
19 restoring the integrity of the Illinois River."

20 Did I read that correctly?

21 A. Yes.

22 Q. All right. First, this draft annual report,
23 can you tell me what that's referring to?

24 A. I suspect it is probably an annual report
25 that is created in conjunction with the 208 Water

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1 Quality Management Plan, I would guess.

2 Q. At the time this letter was written, would
3 it have been normal to allow the EPA to review a draft
4 before it is finalized and sent to the governor?

5 A. Yes. It is a federal requirement.

6 Q. Okay. In that paragraph, the author makes
7 this comment about the goals of the mission statement.
8 Can you explain that to me?

9 A. I'm sorry, which paragraph?

10 Q. We are still talking about the first
11 paragraph.

12 A. The report fails to --

13 Q. Mission statement.

14 A. I don't know. I don't know what that
15 mission statement was. I'm just guessing it is the
16 208 plan. This task force may well have been blessed
17 in some way by the Environmental Protection Agency,
18 but I don't recall. I don't recall.

19 Q. Okay. I'm going to read the second
20 paragraph, it says, "The report's emphasis on
21 collecting data for, quote, environmental defense,
22 closed quote, purposes, i.e. litigation against
23 Arkansas dischargers and its reference to the, quote,
24 struggle, closed quote, i.e. its past efforts to
25 assign all blame for the rivers decline on those

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1 dischargers appears calculated to cause dissension in
2 the joint Illinois River task force, the non-point
3 source comprehensive management team and the
4 cooperative effort to standardize field methodologies
5 for both Arkansas and Oklahoma."

6 Did I read that correctly?

7 A. Yes.

8 Q. Am I correct, sir, in drawing from this that
9 the EPA was critical of Oklahoma's combative approach
10 towards Arkansas and Arkansas dischargers?

11 A. I don't know that -- I'm sorry, restate the
12 question.

13 Q. And I'm not asking you if you agree with the
14 EPA, I'm asking if what the EPA is conveying to you is
15 its view that Oklahoma was being overly critical, and
16 combative with Arkansas regarding Arkansas
17 dischargers?

18 A. I would say that that's the case, yes.

19 Q. And a particular mention here are in the
20 author's words, "Oklahoma's past efforts to assign all
21 blame for the river's decline to Arkansas
22 dischargers;" right?

23 A. Uh-huh.

24 Q. Can you tell me who are the Arkansas
25 dischargers that the EPA is referring to here?

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1 **A.** I suspect at this point in time they are
2 referring to Fayetteville, although there may be, it
3 may also refer to a whole string of facilities,
4 Bentonville, Springdale. There are a number of
5 dischargers that have in the past discharged to the
6 Illinois River.

7 I can't tell you specifically which ones,
8 but given the time and the issue at hand, I suspect
9 that we are talking for the most part about
10 Fayetteville.

11 **Q.** Okay. Now, I'm going to read the third
12 paragraph. "We support monitoring for determining the
13 river's status and obtaining data for making
14 management decisions based on cause and affect
15 relationships, parenthesis, where the cause is a
16 particular pollutant, not a particular state," closed
17 parenthesis.

18 The missions in the report, however, give
19 the reader a one sided impression of conditions in the
20 Illinois River and their causes. For instance, the
21 discussion on pages 4 and 5 concerning the joint
22 Arkansas and Oklahoma Illinois River report points out
23 that annual loadings of phosphorous and nitrogen are
24 excessive to Lake Tenkiller, but fails to explain that
25 it appears the major contributors of phosphorous to

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1 the lake are non-point sources in Oklahoma."

2 Did I read that correctly?

3 A. Yes, you did.

4 Q. Now, again, I'm not asking you if you agree,
5 but the EPA is conveying to you in this communication
6 concern that this draft of the report presented a one
7 sided impression of the conditions of the river and
8 the causes for the river pollution. Do you agree?

9 A. I agree. That that's what they are saying.

10 Q. And one of the issues the EPA highlights in
11 this paragraph is that non-point source -- non-point
12 sources in Oklahoma are major contributors of
13 phosphorous to Lake Tenkiller?

14 A. Yes, that's what it says.

15 Q. Now, the next paragraph, fourth paragraph,
16 I'm going to read part of it here. Under, quote,
17 future activities, closed quote, "There is no mention
18 of developing an objective nutrient water quality
19 criteria for an effective 303 in parenthesis, small d
20 program. EPA believes developing objective water
21 quality standards in a TMDL program should play an
22 extremely important role in managing the water quality
23 of the river and protecting designated uses."

24 "A TMDL is a vital link between water
25 quality standards and point and non-point source

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1 controls."

2 Did I read that --

3 A. That's correct.

4 Q. So certainly at this time in 1992, EPA was
5 expressly encouraging Oklahoma to use the TMDL process
6 to address point and non-point source pollution in the
7 Illinois River Watershed?

8 A. It was.

9 Q. Okay. During, not necessarily during this
10 time period, but at some point you also played a role
11 in coordinating an Illinois River task force, you had
12 another task force?

13 A. It was the state Illinois River task force,
14 I did, uh-huh.

15 Q. In other words, this was Oklahoma's group?

16 A. It was.

17 Q. Tell me what was that task force?

18 A. I don't know -- I don't recall exactly the
19 auspices. I assume it was something that was set up
20 by the governor, and it was interested parties, all of
21 the agencies were involved. Julian Fite who later
22 became active, or maybe at that time was active in an
23 organization called Save the Illinois River was a
24 co-chair, a fellow by the name of Joel Smith, who was
25 the chairman of the Pollution Control Coordinating

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1 Board was the other co-chair, and their job was to --
2 as I recall it, the purposes of that task force was --
3 that task force was created after the Supreme Court
4 decision related to Fayetteville, and in general the
5 work of the task force was where do we go from here,
6 what do we do from here, relative to protection of the
7 river. That's sort of my recollection of it.

8 Q. Generally who were the members or
9 participants in the task force, other than those you
10 have already identified?

11 A. Oh, there were citizen members, and I
12 would -- probably agency people. Probably
13 Conservation Commission and Health Department Water
14 Board, maybe others. I don't recall.

15 Q. People from the public universities?

16 A. Probably.

17 Q. Do you recall when this task force was put
18 together?

19 A. No, I really don't. But my recollection is
20 it was in the aftermath of the lawsuit, the Supreme
21 Court decision. I don't recall.

22 Q. How long did it exist?

23 A. Oh, maybe a year or two.

24 Q. Why did it come to an end?

25 A. I just don't recall. Either it may have

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1 been a change of gubernatorial administrations, it may
2 have -- I don't know. I do not recall. I don't know.

3 (Defendant's Exhibit 12 marked for
4 identification)

5 Q. All right, sir, I'm handing you what I have
6 marked as Exhibit 12 to your deposition. Take a
7 moment and look that over.

8 A. Okay.

9 Q. This is the right Steve Thompson on this
10 one, isn't it?

11 A. I'm not sure if the other one was born yet.
12 Yes. Yes, it is.

13 Q. That would make you the good looking Steve
14 Thompson?

15 A. That's exactly right. You got it.

16 Q. The third sheet in the exhibit, this first
17 page, and it has got July 16th, 1993, 10:00 a.m. It
18 appears to me to be an agenda for a meeting?

19 A. I agree.

20 Q. Okay. And on the agenda, item number 3,
21 discussion of future priorities, annual report
22 framework. Let's turn one page, and there is a
23 document labeled, priorities for the future. It says,
24 "The following items were identified as priorities for
25 the future protection and preservation of the Illinois

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1 River by speakers at the Illinois River symposium,
2 August 30th, 1993."

3 Were you aware of this symposium?

4 A. Yes.

5 Q. Tell me about that, please.

6 A. My recollection is that this was something
7 that was done in the form of a public meeting, where
8 people were giving, given the opportunity to speak
9 about the Illinois River, and citizens were given the
10 opportunity to provide input into the task force and
11 the direction the state needed to take related to the
12 Illinois River.

13 That's my recollection of it.

14 Q. Is it -- would it be reasonable to assume
15 that then this list of priorities was drawn from that
16 discussion?

17 A. Yes, it would be.

18 Q. Under the heading identified needs, the very
19 first bullet point, first item mentioned is a TMDL?

20 A. Uh-huh.

21 Q. You have to say yes or no for the record,
22 please, sir.

23 A. I'm sorry. Yes, that's part of the first
24 heading. Numerical standard and TMDL, that's correct.

25 Q. The third bullet point says, "Lake Francis

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1 dredging."

2 A. Yes.

3 Q. Can you tell me generally, sir, what is the
4 issue with Lake Francis, or what was it at that time?

5 A. I will try. Lake Francis was a lake, as I
6 recall it, that was right on the Arkansas/Oklahoma
7 line. And some viewed Lake Francis as a treatment, as
8 a lagoon, a treatment lagoon, that's the best way I
9 can describe it.

10 So that contaminants that were coming from
11 Arkansas flowed into Lake Francis. It acted as a
12 repository for sediments and other things, and then it
13 came out the other side in better condition than it
14 did when it flowed into the lake.

15 Q. And at some point the dam --

16 A. The dam gave --

17 Q. -- partially breached?

18 A. Yes.

19 Q. So what was the idea about Lake Francis
20 dredging that's been identified here as a need?

21 A. As I recall it, there was some discussion
22 about dredging Lake Francis to return it through a
23 Corps of Engineers project, as I -- I'm not even sure
24 it was a Corp project.

25 Dredging the lake to return it as a

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1 treatment option. That's my recollection of it, that
2 this treatment option had been lost, and now with the
3 breaching of the dam, the river was more free flowing
4 through the lake, and there was some discussion about
5 dredging that lake so that it could return to, as a
6 treatment option. That's my recollection of it.

7 Q. Today, do you -- do you have knowledge of
8 whether Lake Francis -- Lake Francis is a factor in
9 the water, the quality of the water downstream of the
10 Illinois River or not?

11 A. I haven't heard anything or had Lake Francis
12 mentioned to me in a very long time.

13 Q. Do you know who owns Lake Francis?

14 A. No.

15 Q. Does the state own Lake Francis?

16 A. I don't know.

17 Q. To your knowledge, was there a decision to
18 not do anything with Lake Francis in any of these
19 meetings, task force you were involved in?

20 A. I don't think there was -- I don't recall a
21 decision being made one way or the other.

22 Q. Are you aware of there being any actual
23 proposal of specific actions with regard to Lake
24 Francis that came to your attention?

25 A. I don't recall anything other than a general

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1 conversation that I related to you already. But I'm
2 not aware of any specific project that was ever
3 initiated to do that.

4 Now, that doesn't mean there wasn't, but I
5 don't recall it.

6 Q. All right. The same document, turn over to
7 what is actually page 5 of the meeting minutes, the
8 Bates number at the bottom is 2447.

9 A. Okay.

10 Q. Let's just see if any of this text adds to
11 your recollection in any way about Lake Francis.
12 Agenda item number 6, discussion of bi-state effort to
13 dredge Lake Francis. Who is Mr. Hassle that this
14 refers to?

15 A. John Hassle was at that time the division,
16 the water quality division director at the Oklahoma
17 Conservation Commission.

18 Q. Okay. "Mr. Hassle summarized the problems
19 surrounding the lake bed and stated that there is
20 currently no effort being made to address the issue.
21 He further stated that if left as is it will continue
22 to be a source of sediment to the river."

23 "Mr. Hassle suggested that the task force
24 invite other expert professionals who have been
25 involved in this type of process to meet with him and

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1 discuss the possible options." And we jump down, and
2 it says, "Mr. Thompson recommended that a subcommittee
3 be formed of John Hassle, Richard Hoppers and himself
4 to examine the issue and return with recommendations."

5 Okay. Sir, was there any invitation to
6 other experts or any subcommittees tasked with looking
7 in more detail at Lake Francis, to your knowledge?

8 A. Not to my knowledge. Not to my knowledge.

9 Q. Okay. What we just read, does that --

10 A. Actually, I should say not to my
11 recollection.

12 Q. Okay. What we just read through, does that
13 in any way enhance your recollection about any other
14 aspects of Lake Francis issue, other than what you
15 have already told me?

16 A. Well, it appears that Mr. Hassle believed
17 that it was a source of sediment. And while that may
18 have been a part of the discussion, that may have
19 been -- apparently it was a part of the discussion.
20 That's the only thing that jolts my memory, but I
21 don't recall.

22 Q. Are you aware of whether anyone to your
23 knowledge has expressed a scientific opinion that Lake
24 Francis is an ongoing source of phosphorous into the
25 lower Illinois River?

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1 **A.** Not to my knowledge.

2 **Q.** All right, sir, I want to look back at this
3 sheet that says priorities for the Bates numbers,
4 2442.

5 **A.** Okay.

6 **Q.** Next to the last bullet point, under
7 identified needs, it says, "Addressed problems within
8 the entire watershed;" correct?

9 **A.** It does.

10 **Q.** Now, I want to ask you, other than the
11 allegations that have been made in this lawsuit that
12 relate to the poultry, poultry operations, what
13 threats to water quality exist in the Illinois River
14 watershed today, to your knowledge?

15 **A.** Well, there are a lot of things that could
16 have an impact. I'm not sure I would characterize it
17 as a threat, but there are things that could have an
18 impact in it.

19 Septic systems have been mentioned as the
20 possibility of having an impact to it, point source
21 discharges, background. There is a number of other
22 things.

23 **Q.** Commercial fertilizer, would you include
24 that as a potential impact?

25 **A.** Commercial fertilizer.

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1 Q. Now, as of a few years ago, the state of
2 Arkansas regulates commercial fertilizer use in the
3 Arkansas portion of the Illinois River Watershed. Is
4 that your understanding?

5 A. I did not know that.

6 Q. Why doesn't Oklahoma regulate commercial
7 fertilizer use in nutrient limited watersheds?

8 MR. HAMMONS: Object to the form.

9 THE WITNESS: I would have to ask the
10 Department of Agriculture that question.

11 Q. (BY MR. MCDANIEL) Do you have an opinion as
12 to why commercial fertilizer is not regulated?

13 A. No.

14 Q. You mentioned septic systems. How about
15 stream bank erosion?

16 A. It is -- that's a possible impact.

17 Q. Do you know of any ongoing efforts in the
18 Illinois River Watershed to stem the problem with
19 stream bank erosion?

20 A. I'm not specifically aware of those. I know
21 that there -- the Conservation Commission is doing
22 work in the area, but the specific work that they are
23 doing, I'm not that familiar with.

24 Q. When was the last time you were within the
25 Illinois River Watershed, and let's exclude zipping by

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1 on the highway? You went there to be there for some
2 purpose.

3 A. We have had -- we have had a, let's see, I
4 was there to receive an award from Ed Fite one time,
5 and we have had board meetings in Tahlequah.

6 But if your question is, have I done a close
7 surveillance of the Illinois River in the last several
8 years, the answer is no.

9 Q. My question is not really that, I'm just
10 trying to get an understanding of the extent of your
11 personal familiarity with the watershed?

12 A. Well, I wouldn't say that -- I really don't
13 know how to -- I'm somewhat familiar. I am somewhat
14 familiar.

15 Q. Have you ever floated or canoed any of the
16 streams?

17 A. When I was younger.

18 Q. So as an adult as an environmental
19 professional, have you been on any of the streams?

20 A. I don't recall having been on it since I was
21 the director of the agency. I have been -- I have
22 been on the river while I was in -- since I have been
23 in state government, but I can't recall exactly the
24 dates.

25 Well, let me -- yes, we did take, in '92

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1 when these task forces were going on, we did float the
2 river. And I believe I have been there one time
3 since. To float the river.

4 Q. A petri dish in one hand and a Budweiser in
5 the other one?

6 MR. HAMMONS: Object to the form.

7 Q. (BY MR. MCDANIEL) You don't have to answer
8 that. Your attorney can tell you to take the fifth on
9 that one.

10 A. I don't drink Budweiser.

11 Q. I understand. I wasn't talking to you about
12 you, surely it was somebody else besides you.

13 All right, but since the early '90s, to your
14 recollection you haven't floated or canoed on any of
15 the streams?

16 A. No, it has been a while.

17 Q. How about Lake Tenkiller?

18 A. No.

19 Q. Ever been out on a boat and seen Lake
20 Tenkiller from the water?

21 A. About the same time, but not recently, no.

22 Q. Back to the issue of stream bank erosion,
23 would you agree that the Illinois River has gotten
24 wider and shallower across the years as a result of
25 erosion?

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1 A. I really don't know the answer to that
2 question.

3 Q. Speaking in terms of habitat, would you
4 agree that the water in the river in locations has
5 gotten warmer because of the reduced riparian shade?

6 A. I really don't have information -- I really
7 haven't -- the answer to your question is I don't have
8 that information.

9 Q. Do you have any opinion about how the
10 habitat has changed in the Illinois River waters in
11 the last 20 years?

12 A. No.

13 Q. On the issue of potential influences,
14 impacts on water quality in the Illinois River, would
15 you agree that free grazing cattle are a potential
16 impact on water quality?

17 A. I would say it is a potential impact. Is
18 that your question?

19 Q. Yes, sir.

20 A. Yes.

21 Q. And can you tell me in your view what are
22 the effects of grazing cattle and cattle that have
23 access to the streams?

24 A. I would suspect that it would be nutrient
25 runoff.

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1 Q. Okay. This is not something that you're
2 personally familiar with?

3 A. It is not.

4 Q. And you have not reviewed any particular
5 studies on the issue?

6 A. I have not.

7 Q. Okay. Sir, do you have an opinion about
8 what the effect of the fast growth and urbanization in
9 Northwest Arkansas has had on the Oklahoma's water
10 quality in the Illinois River watershed?

11 MR. HAMMONS: Object to the form.

12 THE WITNESS: Well, I have an opinion that
13 relative to -- we are not at this time particularly
14 satisfied with the actions that are being taken to
15 safeguard the river from point source -- from point
16 sources in Arkansas.

17 Q. (BY MR. MCDANIEL) Okay. Can you elaborate
18 on that?

19 A. Well, the Secretary of Environment and the
20 state of Arkansas, I don't know who exactly, signed an
21 agreement a year or two ago to allow a new waste water
22 treatment plant to be built at Bentonville. And it
23 was our understanding that a number of other
24 facilities would be -- this would be a collective
25 facility, a regional facility. And now it appears

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1 that that is not the case. And they are asking to
2 discharge into the Illinois River.

3 So in that specific case, which is very
4 current, we are not satisfied with the discharge
5 permit that has -- that has gone out for public review
6 from the Arkansas Department of Environmental Quality.

7 Q. You were under the impression that this new
8 proposed facility would be replacing other discharges
9 so there would be no net increase?

10 A. So there would be -- actually, there would
11 be a net reduction.

12 Q. Because of improved technology?

13 A. Because of improved technology at the one
14 plant, as opposed to several dischargers.

15 Q. Okay. Anything else? You said you're not
16 satisfied with regard to these --

17 A. That's a major issue that we are dealing
18 with now, yes.

19 Q. How --

20 A. As to urbanization, the impact that we would
21 have input into from the state level would be the
22 point source discharges. That's where our focus would
23 be, and so that's why we are concentrating on this
24 particular facility.

25 Q. Within Oklahoma Department of Environmental

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1 Quality, you have staff and personnel who also look at
2 stormwater management; correct?

3 A. That's correct.

4 Q. Is anyone drawing any conclusions with
5 regard to stormwater management as a consequence of
6 this urbanization in Northwest Arkansas?

7 A. Not that they have made me aware of.

8 Q. How would you characterize the rate of
9 growth and urbanization in Northwest Arkansas?

10 A. It is pretty big. Looks like there's been
11 significant growth in that area.

12 (Defendant's Exhibit 13 marked for
13 identification)

14 Q. Mr. Thompson, I hand you what I have marked
15 as Exhibit 13. From the files of the Scenic Rivers
16 Commission. This particular e-mail appears to be from
17 Jon Craig to Mark Coleman, yourself and others, dated
18 July 14th, 2000.

19 Does it appear that you are the correct
20 Steve Thompson as on this e-mail?

21 A. Yes.

22 Q. Do you recall this e-mail?

23 A. Not specifically, but I don't deny -- I
24 mean, I believe I'm a recipient of it, yes.

25 Q. Okay. Take a moment and read this, and then

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1 I would like you to tell me in a nutshell what
2 Mr. Craig is trying to convey to you and the others.

3 A. I would say that the message that was being
4 conveyed was that the states and EPA worked on the
5 TMDL rule. Mr. Craig's belief was that, I guess I'm
6 reading between the lines here, but that the state
7 input to the rule was ignored by the Environmental
8 Protection Agency, and they issued a rule without that
9 input. So he's expressing his regret at the loss of
10 an effective TMDL rule. That's the way I read it.

11 Q. Okay. On the second page with regard to
12 this loss of an effective rule, he says, almost about
13 in the middle of his text, "If this happens, there
14 will be no clear way to address non-point source
15 pollution which impairs water quality standards." He
16 said that; correct?

17 A. Yes, he did.

18 Q. And then do you agree with that statement,
19 without an effective rule --

20 A. I don't know that I would agree that there
21 is no way to address non-point source pollution, but
22 it is an effective tool.

23 Q. Okay.

24 A. If done properly.

25 (Defendant's Exhibit 14 marked for

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1 identification)

2 Q. This is Exhibit 14, Mr. Thompson. We are
3 not going to read everything in it --

4 A. That's good.

5 Q. So I'm not going to ask you to read the
6 whole document, but if you want to take a moment to
7 look at it so you understand what the document is, I
8 would appreciate it.

9 A. Appears to be a QA project plan for a TMDL
10 on the Illinois River and the Lake Tenkiller.

11 Q. Okay. Generally a Q-A-A-P, a QAAP, Quality
12 Assurance Project Plan, generally, what is a Quality
13 Assurance Project Plan?

14 A. It is a document that assures quality work
15 in the implementation and testing and monitoring
16 necessary to do any project, it is a quality assurance
17 plan, similar to many other quality assurance plans.

18 Q. Is a QAAP a necessary part of Oklahoma's
19 TMDL water quality work?

20 A. Yes.

21 Q. And Oklahoma Department of Environmental
22 Quality would not undertake this type of work without
23 a QAAP, would it?

24 A. No, we would not.

25 Q. In my review of documents, which I'm not

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1 going to represent to you is exhaustive, but this is
2 the first TMDL project package that, for the Illinois
3 River Watershed that I saw, and this is dated May
4 15th, 2003.

5 Are you aware of any project package for the
6 Illinois River TMDL that may predate this?

7 A. No.

8 Q. If you flip into the document, and I'm
9 referring to the page numbers at the top, page 2 of
10 20?

11 A. Page 2 of 20?

12 Q. Yes, sir.

13 A. Okay.

14 Q. All right. On the last paragraph, let me
15 read this statement, it says, "The first step in the
16 restoration of such a waterbody consists of conducting
17 a total maximum daily loading study to develop the
18 state's watershed restoration assessment strategy for
19 this waterbody."

20 Do you agree with that statement?

21 A. I agree with the statement, yes.

22 Q. And reviewing this, it appears that this
23 TMDL study was going to be accomplished in part by
24 making use of computer simulations prepared by Dr.
25 Storm of Oklahoma State University?

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1 **A.** That's correct.

2 **Q.** Let's turn to page 4 of 20. In the
3 middle -- page 4 of 20, just below number 6, the
4 paragraph that begins, there it says, "It is
5 recognized that surface water, non-point source water
6 quality modeling and monitoring have fundamental
7 uncertainties because of the high transient and
8 diverse phenomena involved. The precision and
9 accuracy that can be obtained are not as good as that
10 can be attained for some other types of environmental
11 models, such as groundwater models of conservative
12 substances."

13 Do you agree, Mr. Thompson that surface
14 water, non-point source water quality models have
15 significant uncertainty?

16 **A.** That the models do?

17 **Q.** Yes, sir. Modeling output.

18 **A.** They have fundamental uncertainties. There
19 are other methods that are more certain.

20 **Q.** Okay. But models nonetheless can be useful
21 in making watershed management decisions?

22 **A.** They can.

23 **Q.** Is that one of the reasons why DEQ uses
24 models in developing total maximum daily loads?

25 **A.** That's one of the reasons.

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1 Q. What are the other reasons?

2 A. Other reasons is cost. Models are more cost
3 effective. We can't -- we just don't have the
4 resources to do the kind of ground truthing necessary
5 in every case in impaired watersheds. So there is a
6 cost associated with it that we have to take into
7 account.

8 Q. The fundamental uncertainty associated with
9 modeling, that level of uncertainty is acceptable for
10 purposes of watershed management?

11 A. Yes, acceptable to the -- to both us and to
12 the Environmental Protection Agency, that's correct.

13 Q. I think you can set that one aside.

14 A. Are you through with this one?

15 Q. Yes, sir. All right, sir, I have handed you
16 what I have marked as Exhibit 15. The first page is a
17 memorandum from -- is that Ilda, Ida?

18 (Defendant's Exhibit 15 marked for
19 identification)

20 A. Ilda Hershey.

21 Q. Ilda Hershey from ODEQ?

22 A. Uh-huh.

23 Q. To Jennifer Lee Meyer Wasinger. Actually, I
24 believe I said that just backwards. It is to
25 Ms. Hershey from Ms. Wasinger?

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1 A. That's correct.

2 Q. Dated May 7th, 2003. This came from ODEQ
3 files.

4 A. Uh-huh.

5 Q. And Ms. Wasinger states, "Attached please
6 find the letter from EPA Region 6 regarding the
7 Quality Assurance Project Plan for the above
8 referenced grant project. EPA completed their review
9 and subsequently approved ODEQ's advised QAAP
10 submitted May 19th, 2003."

11 And then attached to it is, what, what is
12 that from the EPA?

13 A. It is a letter from EPA to, back to
14 Ms. Wasinger, stating that the QAAP has been approved.

15 Q. All right. When ODEQ gets an approval from
16 the EPA on a QAAP, does that mean you can then proceed
17 with the work?

18 A. It means we can, yes.

19 Q. Did this EPA approval of this QAAP in May of
20 2003, did that lead to the development of the TMDL for
21 the Illinois River and Lake Tenkiller?

22 A. It led to the development of a draft TMDL.

23 Q. When was that draft prepared?

24 A. I don't recall. Hold on. Is it me, am I
25 rocking?

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1 (Defendant's Exhibit 16 marked for
2 identification)

3 Q. All right, sir, here is Exhibit 16. Again,
4 a transmittal it appears to me from Ms. Hershey to
5 Ms. Wasinger, July 29th, 2004. Do you know why
6 there's been a new QAAP?

7 A. No, I do not.

8 Q. Look at page 3, if I may assist you in
9 answering questions. There is discussion about
10 utilizing an HSPF model for the TMDL for Tenkiller
11 Ferry Lake, and it also discusses utilizing Tetra Tech
12 as one of the service providers here.

13 A. Uh-huh.

14 Q. Can you tell me, sir, what happened to the
15 work plan that was going to employ the modeling work
16 of Dr. Storm and now we are discussing different
17 models and different contractors? What is going on?

18 A. I don't know.

19 Q. During --

20 A. I don't know.

21 Q. During the course of this period, 2004, how
22 intimate was your involvement in the Illinois River
23 Watershed TMDL process?

24 A. Not intimate.

25 Q. Who would be -- who would you point to as

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1 being the person within ODEQ with their finger on the
2 pulse of this project?

3 A. Jon Craig. But there were -- well. As to
4 the process, as to the TMDL process, Jon would be the
5 one.

6 Q. I'm sorry, I wasn't quite finished with
7 that.

8 A. I'm sorry.

9 Q. If you would turn to page 6 of 31. There is
10 some -- there is a project schedule laid out here, and
11 under task 6 it says, "Prepare TMDL end points for
12 nutrient loading from the Illinois River and Barren
13 Fork Watersheds as inputs to the Tenkiller Ferry Lake
14 by November of 2004. Do you know if that benchmark
15 was met?

16 A. I do not.

17 Q. All right, set that aside.

18 A. This one?

19 Q. Yes, sir. All right. I handed you Exhibit
20 17, again, another transmission from Ms. Wasinger to
21 Ms. Hershey, this one dated September 6, 2004. This
22 one states, "Attached please find the letter from EPA
23 Region 6 approving the Quality Assurance Project Plan
24 entitled, Review of Monitoring and Assessment Data to
25 Support Development of TMDL for Lake Tenkiller and the

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1 Illinois River Watershed."

2 And does it appear that the approval from US
3 EPA dated September 15th, 2004 is attached?

4 (Defendant's Exhibit 17 marked for
5 identification)

6 A. It does.

7 Q. Did this approval of a QAAP result in a TMDL
8 being completed for the Illinois River Watershed?

9 A. Not that I'm aware of.

10 Q. What is the status of the TMDLs for the
11 streams and Lake Tenkiller in the Illinois River
12 Watershed?

13 A. It remains in draft.

14 Q. Why is that?

15 A. Somewhere during this time period, it came
16 to my attention that process by which TMDLs were done
17 and load allocations were made using the TMDL process
18 might produce an answer, where there was an unfair
19 allocation given to point sources.

20 And that had to do not with the TMDL process
21 itself, or with the QAAP, or with anything else, but
22 with the way that the Water Board determines water
23 quality standards. It has something to do with the
24 water quality standards.

25 And I am not, I am certainly in favor -- and

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1 it has to do with flow. And while I am certainly in
2 favor of an equitable process for allocations of load
3 between point sources and non-point sources, I am not
4 in favor of an inequitable process.

5 And so I asked Jon Craig, our Water Quality
6 Division Director, to take that issue up with the
7 Oklahoma Water Resources Board, and to the best of my
8 knowledge, that discussion, I haven't checked on it in
9 a while, probably I should.

10 But until I'm satisfied that there is an
11 equitable distribution of the load between point
12 sources and non-point sources, I'm going to be
13 uncomfortable with the results.

14 It was at that time that I, while we had a
15 lot of TMDL work that needs to be done, to the best of
16 my knowledge, that TMDL work has been done in
17 watersheds where there are only non-point sources of
18 pollution, where this issue doesn't arise.

19 So, we went forward with TMDLs in watersheds
20 where there were only non-point sources or where there
21 was, where an industry or a municipality needed to do
22 a TMDL, often they were the contractors on the TMDL to
23 allow an increase in their discharge, to determine if
24 there was sufficient room within the standard to allow
25 an increase in either flow or concentration.

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1 So that was -- that was my decision. Until
2 I'm, my people can tell me that they feel that -- not
3 being a scientist, that that distribution is
4 appropriate, that will be our position.

5 Q. Where is the difficulty arising? Is it in
6 the way the water quality standard is drafted, or is
7 it in --

8 A. When you take readings, you take readings
9 at, under the current process at high temperature and
10 low flow. I mean, it is clear the impacts from
11 non-point sources, irrespective of the source, whether
12 they are my sources or somebody else's sources,
13 sources that I have jurisdiction over or somebody else
14 have, occur at high flow.

15 And so there has to be some -- it seems to
16 me, common sense dictates to me as a non-scientist,
17 that there has to be some accommodation to that idea.

18 Q. It sounds like, if I'm hearing what you're
19 saying, that part of the problem is the way the
20 standard is set up, if the standard is going to be
21 based on low flow samples, you believe the result is
22 inequitable?

23 A. I think it is biased toward non-point
24 sources.

25 Q. Okay.

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1 A. It is biased, the bias is against point
2 sources. And so it is in the -- it is in the
3 standards process, it is -- it is really the
4 implementation guide to standards, as I understand it,
5 as it was explained to me.

6 And I have asked our folks to look with the
7 Water Board. Now, they set these -- they are the ones
8 that set the standard. I don't have any authority to
9 set those standards. I have the authority to do the
10 TMDLs, but I don't have the authority to set standards
11 or to create implementation guides.

12 But I think we need to work through that
13 issue, and then once we work through that, to my
14 satisfaction, where I feel that there is this
15 equitable representation of both, and I don't care
16 which way it comes out, but when I become convinced
17 that there is equitable representation of loading for
18 both non-point source and point source, then we will
19 move forward.

20 Now, there are times when we have to go move
21 forward in the sake of, for the sake of municipalities
22 needing to grow and industries needing to do things,
23 where we have to do TMDLs, or at least waste load
24 allocations, where both exist.

25 I don't have the -- I don't have the details

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1 of that, so I didn't put a, you know, total -- I
2 didn't stop it totally. But I directed most of the
3 work to be done that we are doing without some outside
4 stimulus to be done in watersheds where there was
5 simply non-point sources.

6 So I need to -- as soon as that issue is
7 resolved to my satisfaction, then we will move
8 forward.

9 Q. Have you established a time line for
10 reaching some resolution?

11 A. No. I didn't establish a date. I did ask
12 them to hurry every chance they got. But the fact of
13 the matter is, all we can do is encourage another
14 agency to move forward with that.

15 Q. And Mr. Craig as the -- is the point person
16 for DEQ?

17 A. Yes, he is.

18 Q. Who is his counterpart at OWRB?

19 A. Derek Smithee.

20 Q. Okay. Have you had any communications with
21 Mr. Smithee on this issue?

22 A. I have not. I have -- I mentioned it in
23 passing once to DeWayne Smith, who is the executive
24 director of the Oklahoma Water Resources Board, but it
25 was not a long conversation.

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1 Q. Does the Oklahoma Water Resources Board
2 recognize the same issues that you do, or let me
3 phrase it differently. Does it appear that they
4 understand the current concerns that you have?

5 A. I think that it would be fair to say that
6 they understand it. Keep in mind also that when you
7 talk about changes to water quality standards, while
8 there are state rules, they require federal approval,
9 EPA approval.

10 And so it is not a -- it is not an easy
11 process. It is not an issue that you can snap your
12 fingers and have done. I would prefer to have it
13 done. I would prefer to be comfortable with this. So
14 I have certainly not delayed it. I have certainly not
15 asked them to delay it.

16 And the more quickly it becomes, I am
17 convinced that either the current process is fair, or
18 changes that have been made to make it fair have been
19 done. I'm willing to go forward. But I want to be --
20 I really need to be convinced that the process is
21 equitable.

22 And so, I know, I had a conversation with
23 Jon about this, I had a conversation in which I asked
24 him to talk to Derek about it. I had a conversation
25 in which Jon had said he had that conversation. I

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1 don't know time frames, I don't recall any of that.

2 But is it fair to say that this issue arose
3 because of the sensitivity of the Illinois River
4 Watershed, the answer to that is absolutely, it is,
5 because of the sensitivity, because of the lawsuit,
6 because of the relationship between us and Arkansas
7 for a whole array of reasons, it is fair to say that
8 this issue was elevated to my attention, or I became
9 aware of it as a result of all of those activities.

10 But I am very interested in once that and
11 other TMDLs, not just this one, but other TMDLs are
12 done across the state, that there is this -- that I
13 have comfort that there is this equitable allocation
14 between the two sources. That's a policy to -- that's
15 a policy decision that I made.

16 Q. Well, I just want to say I have been in
17 this, involved in this lawsuit since 2005, you're the
18 first person to give me a straight answer to that
19 question. I appreciate it.

20 A. Well, I don't -- okay.

21 Q. I don't have a gold medallion for you to
22 take home to show off, but I'm just telling you.

23 A. If we could take a little time off to go to
24 the restroom, that would be reward enough.

25 Q. You're cheap, you get your wish.

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1 (Short break)

2 Q. (BY MR. MCDANIEL) Mr. Thompson, let me
3 follow-up on a couple things you said in your prior
4 answer. First off, Dr. Dan Storm's work, his team's
5 work, does he have an ongoing role in this TMDL work?

6 A. I don't believe that he does.

7 Q. Okay. Because, you know, we have seen his
8 draft report from June '06 or so, it has been talked
9 about in lots of depositions, we have talked to him
10 about it.

11 A. Right.

12 Q. And I haven't been able to get a clear
13 answer whether he's still working or not?

14 A. I would say -- it is a question I can answer
15 for you -- I can get an answer for, but I don't have
16 the answer for you today. But to the best of my
17 knowledge, he is no longer involved.

18 Q. All right. Are there any contractors
19 working on TMDL development for the Illinois River
20 Watershed at the moment?

21 A. To the best of my knowledge, no. When I had
22 this discussion, my assumption was that, well we may
23 have existing contracts out there. I don't think
24 there's been any work done on them.

25 Q. Okay.

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1 A. I just don't know. I don't know the answer
2 to those questions.

3 Q. Who has the ball on the next step towards
4 the objective of providing you with a scenario under
5 which you believe the TMDL process will be equitable
6 and can proceed?

7 A. Well, there is several parts to that answer.
8 Ultimately the ball will be in the Oklahoma Water
9 Resources Board's court, because they are the keepers
10 of the Oklahoma Water Quality Standards.

11 But it is incumbent on us, the DEQ, to
12 pursue that change, and then that change ultimately
13 will have to be approved by the environmental, I
14 assume that change -- I'm not clear whether an
15 implementation guide has to be approved by EPA or just
16 the standard itself.

17 So there may be a role in this with EPA and
18 there may not, I don't know the answer to that. But
19 clearly the decision on this rests with the Oklahoma
20 Water Resources Board.

21 Q. Given the amount of time that has passed
22 since the .037 phosphorous standard was adopted, is it
23 your expectation that if the water quality standards
24 or guide need to be revised to your satisfaction, that
25 it will change the implementation schedule?

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1 A. The implementation schedule for the TMDL?

2 Q. Well, no. Let me -- currently there is a
3 requirement to meet this .037 water quality standards
4 in 2012, is my understanding, is that yours?

5 A. Yes. Well, I'm not sure there is a
6 requirement.

7 Q. Explain that.

8 A. I believe there was an agreement between
9 Arkansas and Oklahoma, there was an agreement between
10 Arkansas and Oklahoma that talks about 2012 as the end
11 point, because that is when the last of the point
12 source dischargers, the renewal of their current
13 permits occurs.

14 So I'm not -- I mean, I may be mixing apples
15 and oranges here. There was an agreement that was
16 talked about between the two -- between the two
17 states. If there is a, I don't believe standards have
18 an implementation, I'm not sure what you're talking
19 about.

20 Q. The agreement you mentioned a few times, I
21 have certainly seen a document referred to as the
22 joint statement of principals. Does that sound like
23 the document you're referring to?

24 A. Yes, it does.

25 Q. Okay.

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1 **A.** But I'm not sure that's a -- yes, I believe
2 that's the document I'm talking about.

3 **Q.** You mentioned that the two states'
4 relationship and this lawsuit raised sensitivity was
5 your word you used to the issue.

6 What I need you to explain to me,
7 Mr. Thompson, is more specifically how this lawsuit
8 has had an effect on the TMDL development process?

9 **A.** I want there to be the fairest possible
10 allocation of loading between non-point sources and
11 point sources. That's what I want. State-wide, but
12 particularly in this case.

13 So until again I am convinced that either
14 the current process is fair, which I currently believe
15 it to be unfair, or that a fair process is in place, I
16 just don't think we are going to go forward with the
17 TMDL.

18 **Q.** Okay. I understand that. But I don't
19 understand how that relates to the lawsuit.

20 **A.** I'm not sure it relates to the lawsuit. It
21 relates to the whole -- it relates to the whole issue
22 of the Illinois River Watershed. The lawsuit being
23 obviously a part of it, but other issues, our
24 relationship, the impacts on the state of Arkansas,
25 there is a whole range of things that are going on in

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1 that watershed, and I just want to make sure that
2 whatever decisions are made in that TMDL are
3 equitable.

4 Q. Have you received any direction from either
5 the current or former Secretary of Environment with
6 regard to implementation of TMDLs, or excuse me,
7 development of TMDLs for the Illinois River Watershed?

8 A. No.

9 Q. Did either gentlemen tell to you hurry up,
10 slow down, anything?

11 A. No.

12 Q. Did you receive any direction or
13 recommendations from the Attorney General or any of
14 his representatives with regard to the TMDL?

15 A. I have not.

16 Q. Anyone else on your staff, to your
17 knowledge, communicated with anyone from the Attorney
18 General's office about TMDLs?

19 A. I was told that the Attorney General's
20 office told us to hurry every chance we got.

21 Q. When were you told?

22 A. I wasn't. I was told this, oh --

23 Q. Somebody told somebody that told you?

24 A. Somebody told somebody that told somebody
25 that told me. The specifics of that, I can't recall.

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1 It is one of many conversations I have about many
2 things. But Attorney General's office has neither
3 directed me to stop the development of the TMDL, and
4 the only sort of sidebar conversation I had with
5 somebody was that they were anxious to have it done.

6 Q. Do you consider --

7 A. I had a conversation -- tell you in answer
8 to your question, I had a conversation with the former
9 Secretary of Environment, in which I expressed my
10 position on the TMDL, much as I expressed it to you.
11 And he had no comment on that, one way or the other.

12 Q. I gather you hold the TMDL process in rather
13 high regard?

14 A. I do.

15 Q. Is it your opinion that it is -- it is the
16 appropriate way to manage multiple sources in a
17 watershed in order to achieve a water quality
18 objective?

19 A. It is the best we have.

20 Q. In this lawsuit, have you reviewed any of
21 the reports prepared by any of the experts that have
22 been retained by the outside counsel working with the
23 Attorney General's office?

24 A. No, no, I have not.

25 Q. Have you been provided any?

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1 A. We were provided a briefing.

2 Q. Describe that.

3 A. We were asked to come over and listen to a
4 presentation given by the experts. We attended that
5 meeting. That's the only, my only involvement in it.
6 I haven't -- if we received the information, I didn't
7 review it myself. I passed it along to staff.

8 Q. When was this meeting, approximately?

9 A. Oh, couple months ago.

10 Q. So it has been within 2009?

11 A. Yes.

12 Q. Okay. Tell me who was present.

13 A. The interim director of health, state
14 epidemiologist -- I'm sorry, ask the question again.
15 Is this related to the Illinois River Watershed or the
16 methodology?

17 Q. Okay. My question --

18 A. There was a briefing -- let me go back.

19 Q. To make you feel comfortable that you're not
20 answering a question I haven't asked, tell me about
21 the meeting you had in 2009 with the interim director
22 of the health and other people that were there.

23 A. We had a meeting related to the Country
24 Cottage issue.

25 Q. Okay.

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1 **A.** And that was with the interim director of
2 the Department of Health, the State Epidemiologist,
3 Christy Bradley, myself, Judy Duncan, our Lab
4 Director, Harry Peach, Secretary of Agriculture, Dan
5 Parrish, he is water quality division director. Mike
6 Talkington, their lab director.

7 And there was a briefing related to, by the
8 Attorney General's experts, related to their work.

9 **Q.** Okay. And who were the experts that you
10 received a briefing from?

11 **A.** I don't recall their names.

12 **Q.** Were the experts themselves present --

13 **A.** They were not. They were there by
14 conference call.

15 **Q.** Did you review a PowerPoint or handouts?

16 **A.** We did. There was also a meeting much
17 earlier on, at the beginning of the, several years
18 ago. I have no recollection of attending that
19 meeting. I'm aware that there was a meeting that went
20 on. I may have sent staff, but I don't have any
21 recollection of that meeting.

22 **Q.** Okay. I will come back to this Country
23 Cottage. The original question I was asking you was
24 with regard to the Illinois River lawsuit.

25 **A.** Right.

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1 Q. And my question involved reports prepared by
2 experts hired by counsel working with the Attorney
3 General's office. You said you haven't read any
4 reports?

5 A. No.

6 Q. Have you requested any?

7 A. No.

8 Q. Have any -- do you have specific
9 recollection of any reports coming to you, even if you
10 passed them off to somebody else? Have you even seen
11 them, to your knowledge?

12 A. I don't recall that I have seen them.

13 Q. Do you want to see any of them?

14 A. We have provided information to the Attorney
15 General as needed. So I don't know that I would want
16 to see them.

17 Q. Have you reviewed any report prepared by any
18 expert retained by the defendants in this lawsuit?

19 A. No.

20 Q. Have any been offered to you?

21 A. No.

22 Q. Have you requested to see any?

23 A. No.

24 Q. How do you keep up with what is going on in
25 the lawsuit, the Daily Oklahoman?

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1 A. Daily Oklahoman and whatever briefings are
2 provided to me by the Attorney General's office.

3 Q. And what briefings are provided to you?

4 A. I don't think we have had a lot.

5 Q. Well, when was the last time you had one?

6 A. I don't recall.

7 Q. When you get these briefings, what is the
8 format for a briefing?

9 A. I don't recall that we have had a briefing.

10 Q. Okay. We went from -- we went from
11 briefings to not a lot and now none.

12 A. I don't recall having had a briefing. That
13 doesn't mean they didn't occur. I don't recall having
14 had a briefing.

15 Q. Have you asked for briefings on the lawsuit?

16 A. No.

17 Q. Are you concerned about the lawsuit?

18 MR. HAMMONS: Object to the form.

19 Q. (BY MR. MCDANIEL) Do you have any personal
20 concerns about this lawsuit?

21 A. No.

22 Q. Do you have any professional concerns about
23 this lawsuit?

24 A. Well, I'm a party to the lawsuit as the
25 director of the Department of Environmental Quality,

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1 so I have some professional concerns about the
2 lawsuit.

3 Q. Okay. Because the governor has so directed?

4 A. That's correct.

5 Q. What are your professional concerns?

6 A. Well, just that I'm an agency director that
7 works for the state of Oklahoma, and the agency is a
8 part of the lawsuit.

9 Q. To your knowledge, was ODEQ consulted about
10 developing the scientific evidence in this case?

11 A. No.

12 Q. What is the source of the E. coli 0111
13 outbreak at Country Cottage restaurant in the summer
14 of 2008?

15 MR. HAMMONS: I'm going to object on the
16 basis of attorney-client privilege, and I will lay out
17 what I think we can talk about just to make this
18 easier.

19 Anything dealing with the investigation that
20 they are currently undertaking I will direct the
21 witness not to answer. Any of the public documents
22 that have been turned over, either through discovery
23 or meetings that Mr. Thompson offered up that, where
24 the experts were there, he could talk about.

25 But any conversations with counsel outside

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1 the presence of those experts, I will direct him not
2 to answer as well. And I don't want to make this
3 complicated, but those are -- do those ground rules
4 seem acceptable?

5 MR. MCDANIEL: No. But I'm not going to
6 argue with you about them.

7 MR. HAMMONS: Do you understand them?

8 MR. MCDANIEL: Well, my understanding is
9 not -- I'm going to ask all of my questions.

10 MR. HAMMONS: Sure.

11 MR. MCDANIEL: And you will have to make all
12 of your objections.

13 MR. HAMMONS: Sure, I thought I would make
14 it easier, but let's go ahead.

15 MR. MCDANIEL: I'm not going to not ask
16 questions because of your statement.

17 MR. HAMMONS: Go for it.

18 Q. (BY MR. MCDANIEL) This -- let's get a clear
19 question and instruction to my last question, and you
20 made your statement.

21 MR. HAMMONS: Sure.

22 Q. (BY MR. MCDANIEL) What is the source of the
23 E. coli 0111 outbreak at the Country Cottage
24 restaurant in Locust Grove in 2007?

25 MR. HAMMONS: I object on the basis of

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1 attorney-client privilege and ongoing investigation
2 and direct the witness not to respond.

3 MR. MCDANIEL: I assume I don't have to ask
4 you if you're going to follow the instructions.

5 THE WITNESS: I will.

6 Q. (BY MR. MCDANIEL) Okay. So that I don't
7 spend time if he instructs you not to answer, it will
8 be your intent to follow those instructions for the
9 remainder of this deposition, when he instructs you?

10 A. It will.

11 Q. Okay. Now, this 2009 briefing, Dr. Bradley
12 was present. Who was the interim director of the
13 department --

14 A. Rocky McIlvaney.

15 Q. Anyway, you went through a list of people.
16 I'm not going to ask you to go back through that.
17 What information did you obtain in that meeting?

18 A. The purpose of the meeting was for us to
19 explain to the Attorney General, my purpose was to
20 explain to the Attorney General what the agency was
21 doing in response to the outbreak.

22 There was a briefing by the Attorney
23 General's experts that related generally to their, the
24 science of identifying sources of contamination.

25 Q. And they told you the source was land

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1 application of poultry litter?

2 A. I'm not sure I would characterize it. They
3 went through the process of how poultry litter gets
4 tagged, I guess is the appropriate words. But I don't
5 know that I -- I don't know that they told me that
6 they definitively had identified poultry litter as the
7 source. I don't recall having heard that.

8 Q. What did you share with the group that ODEQ
9 was undertaking in response to the outbreak?

10 A. We were -- we were asking private well
11 owners to allow us to sample their wells and look at
12 their well structure. We had already looked at -- had
13 already sampled and had looked at the historical
14 records for public water supplies and found no
15 problem, no bacterial contamination, but we were
16 testing treated water.

17 And we were doing a reconnaissance of the
18 area to determine if there were any other, any
19 unpermitted public water supplies in the area.

20 Q. Is that the end of your answer, sir?

21 A. Yes.

22 Q. Okay. When you're in the meeting, what did
23 the Oklahoma Department of Health state was their
24 course of action in response to the outbreak?

25 A. They had done an epidemiological study

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1 concerning the outbreak, and they described the
2 information that they were putting together.

3 Q. Okay. Tell me, what did they describe that
4 they were putting together.

5 A. Well, I mean, they were doing a draft
6 epidemiological report of the incident.

7 Q. Did the Oklahoma Department of Health
8 suggest during that meeting what beliefs it held as
9 far as the source of the 0111 bacteria?

10 A. They believed that -- well, they had not
11 been unable to identify specifically the cause.

12 Q. All right. You said they have not been
13 unable -- that confused me?

14 A. They said they had, at that point they had
15 been unable to specifically identify the cause of the
16 outbreak.

17 Q. Okay. With regard to the -- with ODAFF, did
18 ODAFF indicate they were, they had a plan or if they
19 had a plan for course of action in response to the
20 outbreak?

21 A. They were -- I don't know that they came --
22 I don't know that they came to the meeting with a
23 plan. As we -- I don't know, but could you ask them
24 that question.

25 As we discussed what we were going to do,

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1 they either at the meeting or shortly thereafter
2 decided that they would like to accompany us as we
3 sampled the wells to do a surveillance of agricultural
4 sources.

5 Q. In the vicinity of sampled wells?

6 A. In the vicinity of the sampled wells, that's
7 correct.

8 Q. And did ODEQ accommodate that request?

9 A. We did.

10 Q. Did they in fact show up and accompany you?

11 A. They did.

12 Q. All right. Now, the sampling that DEQ has
13 been involved in, is this strictly domestic water well
14 sampling?

15 A. Yes.

16 Q. Nothing else?

17 A. Well, other than -- no, that's not -- we're
18 -- we sampled ourselves the public water supplies, the
19 finished water in the public water supplies, the
20 treated water, because we typically rely on the
21 facility to do the sampling.

22 So we took the extra precaution of sampling
23 those wells ourselves.

24 Q. That's it?

25 A. Yes.

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1 Q. Okay. How many water wells were sampled
2 total?

3 A. 79, as I recall.

4 Q. This sampling program for these wells, was
5 this program developed by ODEQ?

6 A. It is the typical process. It is the --
7 well, no, it was not developed by DEQ, it is the EPA
8 process for sampling for bacteria.

9 Q. And I'm sorry, my question wasn't good, I
10 recognize by your answer. I wasn't so much speaking
11 about the protocol for sampling a well, but I'm
12 talking about the project plan?

13 A. Yes, the project was developed by DEQ.

14 Q. Who was the coordinator or project lead?

15 A. The project lead for the actual sampling was
16 Eric Collins, who is the director of our environmental
17 complaints and local services division.

18 Q. All right. Was Mr. Collins in the field
19 when the work was being done?

20 A. No.

21 Q. Who were the field personnel?

22 A. The field supervisor was Rick Austin, who is
23 our northeast regional manager.

24 Q. Where does he office?

25 A. Offices out of Bartlesville.

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1 Q. The sampling, the field sampling endeavor,
2 you told me about ODAFF accompanying, doing land use
3 survey, or however they would characterize it. Any
4 other agencies involved in the sampling?

5 A. No.

6 Q. Oklahoma Department of Health send anyone to
7 accompany field personnel?

8 A. Not -- no.

9 Q. Did any of these consultants working for the
10 lawyers in this lawsuit, were they present during any
11 of the sampling?

12 A. No. Not to my knowledge.

13 Q. Are you familiar with the consulting firm
14 Camp Dresser and McKee, CDM?

15 A. Not -- no.

16 Q. Well, it is one of the firms working for the
17 Attorney General's lawyers in this case.

18 A. Okay.

19 Q. Any CDM personnel in the field with ODEQ
20 personnel?

21 A. Not to my knowledge.

22 Q. How do you -- help me understand when you
23 have got -- we are talking about three different
24 Oklahoma regulatory agencies on this matter, explain
25 how the roles relate or overlap?

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1 **A.** Well, the Department of Health as a health
2 agency is responsible for epidemiological studies
3 related to this particular issue. We are responsible
4 for public water supply wells.

5 And while there is some argument that we do
6 have regulatory authority over domestic wells, private
7 wells, we have always viewed that as -- we undertook
8 the sampling of these private wells because we
9 believed the, the DEQ believed it had a responsibility
10 to those citizens out there to go out there and check
11 their wells.

12 I suppose our regulatory authority over
13 private wells may be tested in court some day, but we
14 are, our current belief is that we are -- we don't
15 have strong regulatory authority over those, my
16 current belief is.

17 So we just believe we have an obligation to
18 protect, to provide the information to citizens
19 related to their wells, and we undertook that effort.

20 The Department of Agriculture has -- well,
21 and the Department of Agriculture has responsibility
22 for agricultural sources. And so they went out to
23 look at the agricultural sources.

24 **Q.** There was -- was there a written project
25 plan?

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1 **A.** No.

2 **Q.** You saw the press releases telling people
3 they could have their wells sampled if they wanted to.
4 There was no plan for how to manage the project in the
5 field and handle the sample collection, which labs
6 they were to go to, et cetera?

7 **A.** They brought them to our lab. There was
8 notice given in the newspaper and through flyers that
9 we printed up here, distributed locally. We asked
10 people to call us. Those people that called us and
11 volunteered to have their wells sampled, took their
12 names and number through the 24 hour hotline.

13 We assigned that to the field staff, they
14 went out and took the sample. So it was not -- it was
15 not -- it was a project that we believe needed to be
16 initiated relatively quickly, and so we did.

17 **Q.** Do you know what specific analysis was done
18 on the water samples collected?

19 **A.** Yes, they ran them for total coliform and
20 for E. coli.

21 **Q.** Okay. Myself trying to follow this through
22 the newspapers, if well samples came back with the
23 detect for total coliform, was there a second step in
24 the process?

25 **A.** Yes.

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1 Q. What was that?

2 A. We returned to those people that had
3 positives for either E. coli or total coliform, asked
4 them to treat their well, and we looked at well
5 structure.

6 Q. As in was there adequate wellhead
7 protection, that sort of thing?

8 A. As was the well adequately sealed.

9 Q. Was there any further laboratory analysis
10 conducted on the samples?

11 A. Not by the DEQ.

12 Q. Okay. By anybody else?

13 A. Yes. Samples were provided to the
14 Department of Health.

15 Q. Okay. What did ODH do with the samples?

16 A. The Department of Health, it is my
17 understanding tried to speciated the more variant
18 strains of E. coli.

19 Q. So if you're trying to find a source for E.
20 coli 0111, you have got to run some kind of test that
21 will identify the 0111?

22 A. Yes, and we don't have that capacity.

23 Q. Does the Department of Health have that
24 capacity there in their lab?

25 A. Well, I'm not sure of the answer to that

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1 question, but they do have the capacity, in
2 conjunction with the Centers for Disease Control.

3 Q. Well, and I have read that samples had been
4 sent to the CDC. Do you understand that to be the
5 case?

6 A. I do.

7 Q. When the results -- let me rephrase this.
8 Have you been made aware of any results for other
9 analysis by the Centers for Disease Control in any of
10 these water samples?

11 A. It is my understanding that -- yes, I have
12 been.

13 Q. What have you been made aware of?

14 A. While they found some virilant strains of E.
15 coli, it is my understanding that they did not
16 identify 0111.

17 Q. And you're using the word virilant, I don't
18 take issue with that, but if I want to speak of human
19 pathogenic bacteria, would that be synonymous to your
20 use of the word virilant?

21 A. Yes, it would.

22 Q. Any samples split or provided to any of the
23 experts or consultants working with the Attorney
24 General in the lawsuit?

25 A. No. Not to my knowledge.

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1 Q. All right. I have seen some documents
2 produced by the attorneys working with the Attorney
3 General where some of their consultant's labs have
4 performed analysis on water well, on water wells
5 there, including the Country Cottage itself, and I'm
6 just curious if you have any idea of how they obtained
7 those samples?

8 A. No.

9 Q. If consultants working with the lawyers were
10 going to the field with ODEQ personnel, would you
11 expect to know about that?

12 A. Yes.

13 Q. And you have not heard of any such thing?

14 A. No.

15 Q. Now, the laboratories that received these
16 samples for analysis collected by ODEQ, are these the
17 normal laboratories utilized in such investigations?

18 A. The laboratory that received these, to my
19 knowledge, were the DEQ state environmental laboratory
20 and the Health Department's, health laboratory.

21 And then it is my understanding from the
22 Health Department that they sent samples to CDC.
23 Those are the ones that I know of.

24 Q. Okay.

25 A. And those would be the ones that we would

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1 rely on.

2 Q. Who is the person at ODEQ that decided on
3 the analytical parameters? Is that Mr. Collins?

4 A. No, that's Judy Duncan.

5 Q. And what is her position again?

6 A. She is the division director for our
7 customer services division, which includes the state
8 environmental lab. Now, whether she specifically
9 decided on those parameters or somebody on her staff
10 did, I don't know. But she would be the one that
11 would know.

12 Q. She would be the responsible individual of
13 that?

14 A. She would.

15 Q. To your knowledge, has E. coli 0111 been
16 detected in any groundwater sample?

17 A. Not that we took.

18 Q. Okay. That wasn't my question. My question
19 is, if you have knowledge of it being detected in any
20 groundwater sample associated with this investigation?

21 A. I do not.

22 Q. To your knowledge, the Centers for Disease
23 Control did the work related to identifying specific
24 strains of bacteria?

25 A. Yes.

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1 Q. Do you know the other strains of human
2 pathogens that they identified?

3 A. The one that I recall is 0158. There may
4 have been others. That's the one that I recall.

5 Q. E. coli 0158?

6 A. Uh-huh.

7 Q. Right?

8 A. Yes.

9 Q. Do you know how many detections?

10 A. No.

11 Q. And let me rephrase this so I'm clear. Do
12 you know how many wells in which that was detected?

13 A. I do not.

14 Q. Was there -- were there multiple domestic
15 wells that had positive detections for human
16 pathogenic bacteria?

17 A. There were multiple wells that had hits
18 on -- to my knowledge, on both total coliform and E.
19 coli. I don't know beyond that. I don't know -- I
20 don't know whether there are multiple wells that had,
21 for instance, 0158. I don't know that.

22 Q. Well, you do agree that total coliform and
23 E. coli as indicator bacteria are not necessarily
24 pathogenic?

25 A. I do understand that.

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1 Q. Okay.

2 A. And so the information, I don't recall how
3 many wells that found those strains. I just don't
4 recall. I think there was information to that effect,
5 I don't recall.

6 Q. At the locations where human pathogenic
7 bacteria were detected in these groundwater samples,
8 is there any evidence you're aware of that any
9 individual has actually become ill as a consequence of
10 drinking the water?

11 A. Not that I'm aware of, but we wouldn't be
12 the experts on that. Health Department would.

13 Q. But as you sit here today, you're not aware
14 of that case?

15 A. I am not.

16 Q. Has anyone suggested to you, or do you
17 believe that the pathogenic bacteria that was found
18 derived from the land application of poultry manure?

19 MR. HAMMONS: Object to attorney-client
20 privilege and ongoing investigation, direct the
21 witness not to answer.

22 Q. (BY MR. MCDANIEL) All right. I'm going to
23 ask it differently and if you want to object again,
24 that's fine.

25 Sir, do you have a belief as to whether the

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1 human pathogenic bacteria identified in the water well
2 sampling we have discussed derives from the land
3 application of poultry litter?

4 MR. HAMMONS: Same objection.
5 Attorney-client privilege, ongoing investigation, and
6 I'm directing the witness not to respond.

7 MR. MCDANIEL: You're directing him not to
8 respond to his personal belief?

9 MR. HAMMONS: It is part of an ongoing
10 investigation, as director of that agency.

11 Q. (BY MR. MCDANIEL) Mr. Thompson, are you
12 aware of any scientific evidence that E. coli 0111 is
13 commonly associated with poultry manure?

14 A. No.

15 Q. What are the commonly accepted sources of E.
16 coli 0111, if you know?

17 MR. HAMMONS: Object to the form.

18 THE WITNESS: I don't know.

19 Q. (BY MR. MCDANIEL) Has the Oklahoma
20 Department of Environmental Quality concluded that any
21 bacteria identified in any of the wells in this
22 sampling program derived from the land application of
23 poultry waste?

24 MR. HAMMONS: I object. Attorney-client
25 privilege and it is relative to an ongoing

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1 investigation by the Department of Environmental
2 Quality, and I direct the witness not to answer.

3 Q. (BY MR. MCDANIEL) Has anyone other than the
4 experts retained by the outside counsel for the
5 Attorney General in this case told you that bacteria
6 in any well in the Locust Grove area originated from
7 the land application of poultry waste?

8 A. No.

9 Q. We have spoken about the Centers for Disease
10 Control and its analytical work that it performed.
11 Has it had, to your knowledge, any other role in this
12 investigation besides laboratory services?

13 A. Not to my knowledge.

14 Q. Other than what you have shared with me, are
15 you aware of any other reports or conclusions that
16 have been submitted by the Centers for Disease Control
17 related to this incident at the Country Cottage?

18 A. I believe that they were part of the initial
19 investigation into the outbreak, but that may have
20 been press coverage. So I don't have any independent
21 knowledge of that.

22 Q. You have not seen anything cross your desk?

23 A. No, I have not.

24 Q. All right. Dr. Valerie Harwood is one of
25 the experts employed by attorneys for the state. Was

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1 she one of the experts that was part of this briefing
2 in early 2009?

3 A. I really do not recall.

4 Q. All right. Is your recollection that you
5 don't recall her name or you don't -- you know who she
6 is and just don't know if she was part of the meeting?

7 A. I have never met her, I don't know who she
8 is and I don't recall her name. I just don't recall.

9 Q. I will --

10 A. I mean, seriously don't recall.

11 Q. I will represent to you, Mr. Hammons can
12 comment differently if he wishes, but she is an
13 attorney, microbiologist, retained by the attorneys
14 working with the Attorney General's office, and she
15 purports to have developed a poultry specific
16 biomarker for microbial source tracking. Does that
17 ring a bell?

18 A. I would expect that she was one of the
19 people on the call.

20 MR. HAMMONS: I believe you said she was an
21 attorney microbiologist, and I don't think you meant
22 to do that.

23 MR. MCDANIEL: No, I didn't.

24 MR. HAMMONS: We are clear. I know what you
25 meant.

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1 Q. (BY MR. MCDANIEL) She's a microbiologist
2 retained by the attorneys. If she has that skill set,
3 that would be something very, very --

4 A. I guess I need to get better with names,
5 don't I?

6 Q. Well, it is my weakness, too. To your
7 knowledge, have you had any communication with her
8 other than the fact she may have been on the phone at
9 this meeting?

10 A. No.

11 Q. Do you have any knowledge regarding any work
12 that Dr. Harwood may have done related to this
13 investigation?

14 A. No.

15 Q. Are you aware of any opinions that she has
16 offered related to the Country Cottage, Locust Grove
17 investigation?

18 A. No.

19 Q. Do you know who Dr. Roger Olson is, works
20 with Camp, Dresser and McKee?

21 A. No.

22 Q. Dr. Olson is a geochemist consultant with
23 Camp, Dresser and McKee that has been retained by the
24 attorneys working with the attorney general's office,
25 and he purports to have developed a specific chemical

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1 signature for poultry waste?

2 A. He may well have been one of the people on
3 the briefing.

4 Q. Does that ring a bell to you what I
5 describing?

6 A. It does.

7 Q. Can you tell me what, if anything, Dr. Olson
8 has done with regard to the Country Cottage, Locust
9 Grove investigation?

10 A. No.

11 Q. Have you had any communication with him,
12 other than possibly he was on the phone during this
13 meeting?

14 A. No.

15 Q. Has the Oklahoma Department of Environmental
16 Quality evaluated any work performed by Dr. Olson or
17 Dr. Harwood related to the Locust Grove investigation?

18 A. No. Not to my knowledge.

19 Q. So you haven't seen a written work product?

20 A. No.

21 Q. Now, I assume, sir, you're aware that the
22 Attorney General filed a motion in the federal court
23 seeking a preliminary injunction to halt the
24 application of poultry litter in the Illinois River
25 Watershed?

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1 A. I am. I'm aware of the press reports, yes.

2 Q. And I assume you're aware that the Attorney
3 General's motion was rejected by the federal court?

4 A. I am.

5 Q. Did you read the federal judge's opinion
6 from September 29, 2008?

7 A. No.

8 Q. Has anybody ever provided it to you?

9 A. I may have seen -- I may have seen that. If
10 I could look at it, it may jog my memory.

11 Q. Let me hand it to Mr. Hammons first, and he
12 can look at it and hand it to you. I wasn't going to
13 make it an exhibit.

14 A. No, I haven't seen this document before. I
15 don't recall seeing this document before.

16 Q. Okay. If you will hand it back to me and
17 then I will give it back to you. Just for the record,
18 what I have handed you is Docket number 1765, filed on
19 September 29th, 2008 in this case, entitled Opinion
20 and Order.

21 I am going to put a bracket on this so that
22 you can see it and I'm going to hand it back to you.
23 Beginning at the end of page 6, the judge said, "Upon
24 consideration of the evidence presented, the court
25 concludes the testimony and conclusion of expert

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1 witnesses Harwood and Olson presented at the hearing
2 are not sufficiently reliable under the standards
3 enunciated in Daubert."

4 "The expert witness's work has not been peer
5 reviewed or published. The testimony before this
6 court reveals no one outside this lawsuit who has
7 either validated or sought to validate Olson's and
8 Harwood's scientific work. I will hand it back to you
9 so you can read my words."

10 Has anyone made you aware of the federal
11 court's findings with regard to the technical work
12 conducted by Dr. Harwood and Dr. Olson in this case?

13 A. I'm sorry, I don't think I understand the
14 question.

15 Q. Has anyone made you aware that the federal
16 court made these findings about the technical work of
17 Dr. Olson and Dr. Harwood?

18 A. No.

19 Q. How does this ruling by the federal court in
20 Tulsa affect the weight that Oklahoma Department of
21 Environmental Quality places on the methods employed
22 by the these scientists?

23 MR. HAMMONS: I will object to the form of
24 the question.

25 THE WITNESS: Well, not having reviewed the

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1 documents, it was -- okay. Could you restate the
2 question? Could you repeat the question?

3 Q. (BY MR. MCDANIEL) I will be glad to. Given
4 the findings of this judge with regard to the work of
5 these two scientists, how does that affect the weight
6 that Oklahoma Department of Environmental Quality may
7 afford the work of those two individuals in this
8 investigation?

9 MR. HAMMONS: Still object to the form.

10 THE WITNESS: That's a very well stated
11 question.

12 Q. (BY MR. MCDANIEL) Well, we have been at it
13 how many hours, and you finally said something nice to
14 me.

15 A. Doesn't mean I don't think you're a
16 wonderful human being.

17 Q. Yes, I don't want to mess up the record, so
18 go ahead.

19 A. Well, this is a -- this is an opinion --
20 this is a legal opinion, and of course the agency has
21 to consider any legal opinion.

22 Q. Since you have not reviewed or had the
23 opportunity to review any report issued by any defense
24 expert, I assume it is safe to assume from that you
25 have not reviewed any of the criticisms of

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1 Dr. Harwood's work that have been submitted by experts
2 from the defense?

3 A. That's correct.

4 Q. The same would be true, you have not
5 reviewed any of the criticisms of Dr. Olson's work
6 submitted by any of the experts for the defendants?

7 A. We have not, or I have not.

8 Q. If Trevor will let you, you can have that.

9 A. Okay.

10 (Defendant's Exhibit 18 marked for
11 identification)

12 Q. Mr. Thompson, I'm handing you what I have
13 marked as Exhibit 18, and first question is have you
14 ever seen this before?

15 A. No, I don't recall it.

16 Q. I don't see that you're addressed on here,
17 so that doesn't surprise me. Dr. Harwood -- it
18 purports to be a an e-mail from Dr. Harwood to David
19 Page and Roger Olson and others on January 23rd, 2009.

20 It purports to forward a message from Mary
21 Lynn Yates, dated January 23rd, subject is decision on
22 manuscript. And it says, "The subject is,
23 identification of a poultry litter specific biomarker
24 and development of a 16 SR, R & A based quantitative
25 PCR assay." Do you see that?

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1 A. Yes.

2 Q. Okay. Ms. Yates, according to this, is the
3 editor of the Journal Applied in Environmental
4 Microbiology. Take a moment and read to yourself her
5 message to Dr. Harwood, please.

6 A. Okay.

7 Q. Did anyone bring it to your attention that
8 the journal to which Dr. Harwood has submitted her
9 study in the Illinois River case rejected her work
10 twice?

11 A. No person brought this to my attention.

12 Q. Knowing that a academic journal has rejected
13 publication of Dr. Harwood's study in the Illinois
14 River for purporting to develop a poultry litter
15 specific biomarker twice, does that affect the way the
16 Oklahoma Department of Environmental Quality affords
17 her work in the Locust Grove matter?

18 MR. HAMMONS: Object to the form.

19 THE WITNESS: It is the position of the
20 department at this time that we will remain as a state
21 agency party to the lawsuit, and it hasn't affected
22 our decision to be a party to the lawsuit as a state
23 agency.

24 Q. (BY MR. MCDANIEL) Okay. I need to, I guess
25 I need to try to ask my question again, because I

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1 didn't -- I appreciate your comment, but I didn't see
2 it addressed my question.

3 And my question was about Locust Grove
4 Country Cottage. That's why I didn't understand your
5 answer?

6 A. I see.

7 Q. With regard to the Locust Grove Country
8 Cottage investigation and the work that Dr. Harwood is
9 doing, does the fact that this academic journal has
10 rejected this work twice affect the weight that DEQ
11 would afford to Dr. Harwood's work?

12 MR. HAMMONS: Object to the form.

13 THE WITNESS: The Department of
14 Environmental Quality set about what we decided to do
15 relative to sampling the wells, the private wells and
16 to follow that wherever it led, based not on
17 Dr. Harwood's work, but based on our desire to protect
18 human health and the environment from bacterial
19 contamination irrespective of the source.

20 So having that rejected or not rejected does
21 not affect the course that the agency is taking in the
22 Country Cottage issue. It was never our position to
23 worry specifically in that case about source. Our
24 concern was the quality of the water that those folks
25 were getting from their drinking water, from their

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1 water well, irrespective of source.

2 So the answer to your question is, one way
3 or the other it has no affect on what the DEQ is doing
4 relative to those wells, one way or the other.

5 Q. Okay. I'm just waiting to let you finish.
6 I don't want to step over you.

7 A. That's the --

8 Q. Generally speaking, if the department is
9 going to make regulatory decisions based upon work of
10 outside consultants, it expects those consultants to
11 be of high skill and reputation?

12 A. We do.

13 Q. If such a consultant has been found
14 unreliable by a federal court and same consultant has
15 had the study at issue rejected twice by an academic
16 journal, does the agency take those matters in
17 consideration as far as the weight or reliance upon
18 the work of that consultant?

19 MR. HAMMONS: Object to the form.

20 THE WITNESS: Yes.

21 Q. (BY MR. MCDANIEL) Is it part of ODEQ's
22 charge in the Country Cottage matter to find the
23 source of the E. coli 0111?

24 A. Let me answer your question this way. If
25 relative to the protection of public water supply, I

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1 have two issues here, maybe more than two. One is
2 public water supply, and our charge is to protect both
3 public, and we feel an obligation, irrespective of the
4 argument relative to our role in private water supply,
5 the agency feels an obligation when it is provided
6 evidence that there have been bacterial, or an
7 outbreak of any contamination, to try to help those
8 people protect their private wells.

9 We have done it in cases where there was
10 hazardous waste spills and there was contamination of
11 groundwater for which we were responsible for the
12 source, in which we took significant action.

13 It is true of naturally occurring issues
14 like radio nucleites that are occurring in Logan
15 County, where we have held numerous meetings with
16 private well owners and tried to figure out how we
17 provide them with a safe source of drinking water, and
18 it was true at the Country Cottage.

19 So that's our initial and highest concern,
20 is not the source, but protection of the drinking
21 water source, by treatment.

22 It would not -- if we believed that the
23 source of the water was contaminated, irrespective, if
24 we believe -- let me just put it in more specific
25 terms. If we believe an aquifer were contaminated

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1 with bacteria, if we believe that to be the case and
2 we could confirm it, the agency would recommend to its
3 counseling board that more stringent measures be taken
4 relative to its sources, whether it be septic tanks,
5 whether it be lagoons, whether it be any source that
6 is under our control.

7 Now, one would argue that we ought to --
8 that we ought to know specifically that it was our
9 source before we did that, but we also have this
10 obligation to protect people's drinking water.

11 So for our sources, we are going to -- we
12 are going to recommend -- we would recommend to our
13 counsel board who ultimately has the rule making
14 authority, we don't have it, our counsel and board
15 have that authority, that we take more stringent
16 measures in those areas when there is bacterial
17 contamination irrespective of the source.

18 So now I have forgotten your question. But
19 in answer -- but in answer, I guess in answer to your
20 question if we thought there was a threat to drinking
21 water, we would not necessarily need to know that it
22 was our source before we would take action, because of
23 our obligation to protect folk's drinking water.

24 Q. In the case of Country Cottage --

25 A. Does that answer your question?

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1 Q. I understand your answer, but it wasn't a
2 direct answer to my question. So I'm going to work at
3 it a little more.

4 A. Okay.

5 Q. In the case of Country Cottage in Locust
6 Grove, have you identified a situation indicating to
7 you or to ODEQ that there is a threat to the water
8 supply that requires other regulatory or other action?

9 MR. HAMMONS: I will object.
10 Attorney-client privilege, ongoing investigation and
11 direct the witness not to answer.

12 Q. (BY MR. MCDANIEL) Has Oklahoma Department
13 of Environmental Quality identified that there is an
14 aquifer contaminated with pathogenic bacteria in the
15 Locust Grove area?

16 MR. HAMMONS: Objection, attorney-client
17 privilege, investigation privilege, direct the witness
18 not to respond.

19 MR. MCDANIEL: Well, Trevor I'm not going to
20 admonish you, but the court has ruled that
21 environmental facts are not protectable and you can
22 stand by your privilege if you want to --

23 MR. HAMMONS: And I do.

24 MR. MCDANIEL: Okay.

25 Q. (BY MR. MCDANIEL) Is there ongoing field

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1 work associated with the Locust Grove Country Cottage
2 investigation?

3 A. There is an ongoing investigation. That
4 investigation may require additional field work. That
5 decision has not yet been made.

6 Q. The water well sampling program that was
7 made public, is that particular program now concluded?

8 A. I want to be honest, I mean, I want to
9 formulate my answer. All -- all investigations have
10 segments that lead to other activities. So the answer
11 to your question is, that segment of the investigation
12 is completed, but -- those conclusions led us to other
13 activities that are still under investigation.

14 Q. Okay. I didn't want my question to seem
15 overly broad. I'm curious, are people still calling
16 in for the free tests, are you still testing their
17 wells?

18 A. Okay. People called in for a while and then
19 we said that we would not, no longer provide -- at
20 some point we were not -- we were providing the
21 sampling free. At some point we said we are not going
22 to provide free sampling, and no one has called -- to
23 the best of my knowledge, no one has called in some
24 time, asking for a sample.

25 Q. Who is paying for the sampling, coming from

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1 your budget?

2 A. Well, it is coming from my budget, yes, the
3 taxpayers. That's their answer, my answer is coming
4 out of my budget.

5 Q. Have you had any communications with
6 Dr. Bert Fisher, does that name ring a bell?

7 A. No.

8 Q. He's a geochemist from Tulsa, works with the
9 Attorney General in this case?

10 A. No.

11 Q. Has been quoted in the paper in this case?

12 A. No.

13 Q. This ongoing work in this case, the clarity
14 that I'm lacking from your prior answer is I don't
15 understand, is the objective to find the source of the
16 E. coli, 0111, or is the investigation, the objective
17 to find the source of the 0158?

18 A. The objective of the investigation is to
19 determine -- we are no longer investigating specific
20 strains, either specific strain, as far as the DEQ is
21 concerned.

22 Now whether -- what the Health Department's
23 plans are, I don't know. But we are no longer
24 investigating to try to determine a specific strain of
25 E. coli.

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1 Q. If wells are retested and they don't
2 evidence pathogenic bacteria, is that the end of it?

3 MR. HAMMONS: Objection, calls for
4 speculation.

5 MR. MCDANIEL: I want the taxpayers to
6 know --

7 THE WITNESS: The objective of the
8 investigation is to ensure that people have safe water
9 to drink. That's the objective. And we will follow
10 that wherever it leads us. We don't -- we aren't
11 necessarily convinced that these specific strains of
12 E. coli are the end-all, and be-all relative to
13 protection of public water supply. So one may have
14 nothing to do with the other.

15 Q. (BY MR. MCDANIEL) In the course of this
16 investigation, is Oklahoma Department of Environmental
17 Quality going to use the microbial source tracking
18 services of Dr. Harwood?

19 A. No. No, we are not.

20 Q. In the course of this investigation, is
21 Oklahoma Department of Environmental Quality going to
22 use the chemical finger printing expertise of
23 Dr. Roger Olson?

24 A. No, it is not our plan to do that, no.

25 Q. Is it -- excuse me. To your knowledge, what

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1 is proceeding with the Oklahoma Department of Health
2 with regard to this investigation? What are they
3 doing?

4 A. The only thing that I know is that they
5 are -- they are -- they are going to issue their -- at
6 some point they will issue their epidemiological
7 study.

8 Q. When do you expect it?

9 A. That that will occur?

10 Q. Yes, sir.

11 A. Oh, soon. Whatever that means.

12 Q. The Department of Health has said publicly
13 that it is going to issue a report on its
14 investigation. Is Oklahoma Department of
15 Environmental Quality going to issue a report?

16 A. We may. We may. We haven't made that
17 determination yet. It depends on where our
18 investigation leads us.

19 Q. Who is the decision maker, is that you?

20 A. Yes.

21 Q. Is it the Oklahoma Department of Health
22 charge to identify the source of the 0111 bacteria?

23 A. Yes.

24 Q. So in that regard, let me -- this isn't a
25 very good question, but I'm just trying to make sure

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1 you understand. We have got multiple agencies here at
2 the table of this problem, so to speak.

3 I want to know who is the one who has the
4 authority and should stand up and say, here is the
5 answer we have come up with, or could we potentially
6 get different answers from different agencies?

7 A. Relative to -- relative to 0111?

8 Q. Yes, sir.

9 A. There will be one -- now, there will be one
10 agency that will -- you will not see -- the definitive
11 document on the Country Cottage issue is the
12 epidemiological report of the Department of Health.
13 And so you will not see the Department of
14 Environmental Quality issue a report in conflict with
15 that.

16 I doubt we will -- I would -- you will not
17 see a report issued from the Department of
18 Environmental Quality relative to the Country Cottage
19 incident. You may see, you may or may not see a
20 report issued by the DEQ relative to whatever the
21 findings of our investigation into, our investigation
22 of contamination, of contamination of these wells.
23 You may see a report on that.

24 But that report will not talk about the
25 specific pathogens. It just won't. It would talk

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1 about our effort -- what our piece would really be,
2 relative to public -- private water supplies is a
3 preventive piece.

4 Q. Is the agricultural, environmental
5 management service division of ODAFF working with ODEQ
6 in this Locust Grove investigation?

7 A. I don't know the name of the folks that --

8 Q. Dan Parrish?

9 A. Dan Parrish is working with us, that's
10 correct.

11 Q. We need to make a tape change, but we are
12 almost done. I just can't finish in the time he has
13 here.

14 (Short break)

15 (Defendant's Exhibit 19 marked for
16 identification)

17 Q. (BY MR. MCDANIEL) Mr. Thompson, during the
18 break I handed you Exhibit 19, a memo to Tom Gruber
19 from Dan Lennington and Trevor Hammons dated February
20 9th, 2009, subject, Country Cottage groundwater
21 investigation. Sir, have you ever seen this document
22 before?

23 A. I don't recall having seen it, I have heard
24 about it, but I haven't seen it.

25 Q. You obviously know Mr. Hammons because he's

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1 sitting to your right. Do you know Mr. Lennington?

2 A. I do.

3 Q. Well, for the record, who is Mr. Lennington?

4 A. He's an attorney with the Attorney General's
5 office.

6 Q. Let's turn to page 3, and focus our
7 attention to begin with on the discussion of the
8 meeting with Oklahoma Department of Environmental
9 Quality that occurred on January 20th, 2009.

10 Were you aware that this meeting took place?

11 A. Yes.

12 Q. I do not see you as an attendee; correct?

13 A. That's correct.

14 Q. Who was your senior delegate at that
15 meeting?

16 A. Martha was.

17 MR. HAMMONS: I'm sorry --

18 THE WITNESS: Let's see, was Jimmy in this
19 meeting?

20 MR. HAMMONS: I have an emergency phone call
21 I need to take. Can we go off of the record?

22 MR. MCDANIEL: Certainly.

23 (Short break)

24 Q. (BY MR. MCDANIEL) All right. The Exhibit
25 19, page 3, the discussion of the meeting with the

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1 Department of Environmental Quality, did you know
2 about this meeting in advance?

3 A. Probably, yes.

4 Q. Did you receive a report on the meeting
5 after it was concluded?

6 A. I did.

7 Q. What was the general report that you
8 received about this meeting?

9 A. I don't recall specifically what was said at
10 the meeting, other than that -- well, it was reported
11 to me that the Attorney General's office had tested
12 other wells in the area, and that they found in every
13 case bacterial contamination. Not in every -- I'm
14 sorry, not in every case, in most cases.

15 And so then the question -- actually
16 bacterial contamination at a rate that is beyond what
17 we typically see in our -- we do the investigation
18 of -- we do sampling of private wells when somebody is
19 going to sell their home, okay, and we find about a, I
20 don't know, 10, 15 percent contamination rate in
21 those.

22 So anyway, there was this high percentage of
23 contaminated wells that they had discovered. And that
24 is what inspired us to begin this investigation.
25 That's what elevated our concern related to the safety

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1 of private wells out there.

2 Now, all of this -- that's what I remember
3 from the meeting.

4 Q. In your time in environmental regulatory
5 area, working for Oklahoma since 1985, have you ever
6 had a circumstance where another state agency or some
7 other department of state government hired outside
8 consultants to do environmental sampling and then
9 brought you the results, and said hey there is a
10 problem here?

11 A. Oh, I'm sure that's happened before. I'm
12 sure there is contract sampling that goes on all of
13 the time. I can't -- I mean, I don't know -- I can't
14 point you to a specific instance.

15 Q. Have you ever had a circumstance, sir, that
16 parallels the one that occurred here with the Attorney
17 General's office hiring outside consultants to run his
18 own investigation and then come to you after the fact?

19 A. I don't know that -- that an exactly similar
20 circumstance has ever occurred.

21 Q. The report that the authors of this memo
22 make is in the middle, the paragraph, they attribute
23 to the ODEQ personnel there that they agree that the
24 Country Cottage well was contaminated with E. coli,
25 and the source of the E. coli was likely not a human

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1 source, because DEQ had tested the integrity of nearby
2 sewer lines and septic systems.

3 Do you know who for DEQ agreed as
4 represented here?

5 A. No.

6 Q. The Country Cottage well itself, if I
7 understand all of the reports, there has not been a
8 detection of E. coli 0111 in that well?

9 A. That's correct.

10 Q. But has there been a detection of any other
11 kind of E. coli in that well?

12 A. Yes.

13 Q. Is it human pathogenic bacteria, E. coli,
14 versus a nonpathogenic strain?

15 A. I don't know the answer to that question
16 today. I don't know.

17 Q. Okay. It continues --

18 A. Go ahead.

19 Q. DEQ also expressed regret that Oklahoma
20 State Department of Health had made public statements
21 indicating that the well was not and could not be a
22 potential source of the outbreak.

23 Sir, who at DEQ expressed this regret?

24 A. I have no idea.

25 Q. Do you possess such regret that OSDH made

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1 those statements?

2 A. Well was not and could not be -- well, I
3 don't know that regret is the word. But I am -- I am
4 not convinced -- I'm not convinced that it isn't the
5 source, nor am I convinced that it is. There is an
6 issue of someone saying if someone said that, that it
7 could not be the source.

8 I'm not convinced that it positively could
9 not be the source. I am not convinced that it
10 positively is the source. So I mean, I'm not sure
11 that the word regret has anything to do with it.

12 Q. Okay. The next sentence, "DEQ agreed that
13 the well could have been a source of the E. coli that
14 caused the outbreak." I gather you still believe
15 that?

16 A. Yes.

17 Q. It continues to say, "That the only
18 reservations expressed by DEQ were whether they had
19 jurisdiction to address the problem." And I think you
20 have mentioned this a while ago.

21 A. I have.

22 Q. It says we, I assume that refers to
23 Mr. Lennington and Mr. Hammons, explained to them,
24 that being your people, that they have jurisdiction
25 over public and private water supplies which have been

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1 affected by the land application of poultry waste.
2 That's their statement.

3 A. Uh-huh.

4 Q. Now, let's take the Country Cottage well.
5 If the Country Cottage was pulling water out of its
6 private well and serving it to the public, does that
7 make it a public water supply or is that still a
8 private water supply?

9 A. It is still a private water supply.

10 Q. Okay. What strikes me curious, and I want
11 to ask you about this statement here, is these
12 gentlemen are suggesting to DEQ that you have
13 jurisdiction over private water supply which have been
14 affected by the land application of poultry waste.

15 Question number one, who has determined that
16 these private water supplies have been affected by
17 poultry waste? That determination been made?

18 A. Not that I'm aware of.

19 Q. Okay.

20 A. Well, I know what this document says. I
21 tend to view this in a little different manner. The
22 question is whether we have jurisdiction to order
23 someone with a private well to do something with that
24 well, irrespective of the source.

25 And I think the Attorney General's office

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1 believes that we do have that authority, and while
2 that may be the case, the agency under my leadership
3 is going to take some discretion in exercising that
4 authority.

5 Q. And I'm not really here to jump up and down
6 about that.

7 A. Yes.

8 Q. That's not my -- that's not my issue.

9 A. Okay.

10 Q. But I am curious when it brings in the issue
11 of poultry waste, why that wouldn't fall more squarely
12 within ODAFF's jurisdiction over agricultural
13 non-point source pollution?

14 A. Private water supplies?

15 Q. Yes, sir.

16 A. I'm not aware of anything in ODAFF's
17 authorities that says they have authority over any
18 well.

19 Q. Even if the source of the contamination was
20 determined to be agricultural?

21 A. They have authority over the source and
22 responsibility to address that source.

23 Q. But you know Mr. Parrish's group
24 investigates complaints by water well owners in
25 agricultural areas of the state?

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1 **A.** I would not be surprised by that.

2 **Q.** Let's look at page 2 of the memo, under the
3 conclusions heading. The authors state, "Based upon
4 these factual findings, our experts have concluded
5 that the Country Cottage well is and has been
6 contaminated with poultry waste and associated
7 bacteria, including E. coli." Did I read that
8 correctly?

9 **A.** Yes.

10 **Q.** All right. Sir, does Oklahoma Department of
11 Environmental Quality hold that same opinion?

12 MR. HAMMONS: And I'm going to object.
13 That's been asked and answered and I directed the
14 witness not to answer to that very same question.

15 MR. MCDANIEL: Which is it? Object to the
16 form or are you telling him not to answer?

17 MR. HAMMONS: I'm telling him not to answer.
18 You have asked -- I have directed him not to answer
19 before when you have asked him the opinion of the DEQ
20 if poultry waste has contaminated that well that's the
21 source of the outbreak.

22 And if that's the same question, then I'm
23 directing him not to answer.

24 **Q.** (BY MR. MCDANIEL) Mr. Thompson, does
25 Oklahoma Department of Environmental Quality agree

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1 with the conclusion reached by the experts hired by
2 the outside counsel representing the Attorney General
3 in this lawsuit with regard to the Country Cottage
4 matter?

5 MR. HAMMONS: And I object to the form of
6 the question.

7 THE WITNESS: DEQ is not willing to say
8 definitively, nor is it willing to discard the notion
9 that poultry waste may be the source of the
10 contamination.

11 Q. (BY MR. MCDANIEL) As of today, that is not
12 your finding, that it is the source?

13 A. We have not made a finding in that issue.
14 We have not made a finding of that issue.

15 Q. Back to page 6, under Further Action, point
16 number 1 -- well, let's read the introductory. "We
17 believe the agencies have the authority and cause to
18 take the following administrative actions. Number
19 one, immediate ban on the land application of poultry
20 waste in southern Mayes County."

21 Mr. Thompson, has the Oklahoma Department of
22 Environmental Quality recommended an immediate ban on
23 the land application of poultry waste in southern
24 Mayes County?

25 A. No.

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1 Q. Let's see. Point number three, a survey of
2 groundwater quality, I gather as far as the survey is
3 concerned, that's complete; is that true?

4 A. I wouldn't describe it as a survey of
5 groundwater quality. I would -- while groundwater
6 quality may be an artifact of what we did, what we
7 were doing was surveying public water supply --
8 private water supply wells to determine if there was
9 bacteriological contamination.

10 There may be an artifact of that, the
11 groundwater quality may be an artifact of that
12 investigation.

13 Q. The Country Cottage -- no, let me rephrase
14 that. The ongoing investigation in Locust Grove, who
15 is the -- who is running that investigation?

16 A. Well, I guess if you're looking for the
17 decision maker, I am. If you're looking for the
18 people directing the agency's involvement in that
19 ongoing investigation, would be the same ones I
20 mentioned.

21 For the most part, Gary Collins, to some
22 extent, Judy Duncan, and to a lesser extent, Jon
23 Craig. All of them are somewhat involved in that.
24 But the on the ground activities will be directed by
25 Gary Collins, based on decisions that are made by me.

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1 Q. Have you established a time frame for
2 concluding this investigation?

3 A. Not a specific time frame, but when you're
4 talking about people's water supply, they are very
5 interested to know what our conclusions are. So I
6 would prefer to be sooner rather than later, but I
7 have to let the investigation -- I have to be
8 comfortable with the results of the investigation
9 before I do that.

10 Q. With the exception of the enforcement
11 individuals who contracted E. coli 0111 at the Country
12 Cottage, I think we all agree as we sit here today, we
13 don't know where they got it from. I think we agree
14 to that, don't we, sir?

15 A. I think so.

16 Q. Excluding those folks from my question, are
17 you aware of anyone else out there in Locust Grove,
18 Mayes, southern Mayes County that has contracted an
19 illness related to drinking groundwater?

20 A. My -- am I aware of it, no. Could it have
21 happened, maybe.

22 Q. Well, I'm not asking for speculation, I'm
23 looking for evidence.

24 A. Oh come on, let's speculate a little.

25 Q. Well, actually I think aliens did it, but

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1 I'm not sure if I can sell that idea.

2 **A.** No, I don't know. The answer to your
3 question is no.

4 **Q.** Okay.

5 MR. MCDANIEL: That's all the questions I
6 have.

7 MS. LLOYD: I don't have any questions.

8 MR. HAMMONS: We will read and sign.

9 (DEPOSITION CONCLUDED AT 3:30 P.M.)

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1 CERTIFICATE

2
3 STATE OF OKLAHOMA

4 SS

5 COUNTY OF OKLAHOMA

6 I, LAURA L. ROBERTSON, Certified Shorthand
7 Reporter, within and for the State of Oklahoma, do
8 hereby certify that the above-named STEVE THOMPSON,
9 was by me first duly sworn to testify the truth, the
10 whole truth, and nothing but the truth, in the case
11 aforesaid; that the above and foregoing deposition was
12 by me taken in shorthand and thereafter transcribed;
13 that the same was taken APRIL 7, 2009, in the City of
14 Oklahoma City, County of Oklahoma, State of Oklahoma,
15 pursuant to agreement, and under the stipulations
16 hereinbefore set out; and that I am not an attorney
17 for nor relative of any of said parties or otherwise
18 interested in the event of said action.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and official seal this 14th day of April, 2009.

21
22 _____
23 LAURA L. ROBERTSON, CSR, RPR24 State of Oklahoma, No. 01472
25

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ERRATA SHEET

STATE OF OKLAHOMA VS. TYSON, ET AL.

DEPOSITION OF STEVE THOMPSON

REPORTER: Laura L. Robertson, CSR, RPR

DATE DEPOSITION TAKEN: April 7, 2009

PR FILE # 9833

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JURAT

STATE OF OKLAHOMA VS. TYSON, ET AL.

PR. FILE # 9833

I, STEVE THOMPSON, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcription of my testimony so given at said time and place, except for the corrections noted.

STEVE THOMPSON

Subscribed and sworn to before me, the Notary Public in and for the State of Oklahoma, by said witness, _____, on this, the ____ day of _____, 2009.

NOTARY PUBLIC

My Commission Expires: _____
(LLR)PR FILE # 9833

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A		
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